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SUPREME COURT OF THE UNITED STATES.

No. 60.

JAMES McDONALD'S HEIRS, COMPLAINANTS AND APPELLANTS,

VERSUS

FREEMAN SMALLEY ET AL.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE OHIO DISTRICT.

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Pleas begun and held at the court-house, in the town of Columbus, on Monday, the twelfth day of July, in the year of our Lord one thousand eight hundred and thirty, and of the independence of the United States of America the fifty-fifth, before the honorable John McLean and John W. Campbell, judges of the circuit court of the United States in and for the seventh circuit, and district of Ohio.

JOHN McDONALD, *complainant*,
vs.
FREEMAN SMALLY et als., *respondents*. } *In chancery.*

Be it remembered, that heretofore, to wit, on the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and twenty-three, and in the forty-eighth year of the American independence, came James McDonald, a citizen of, and resident in, the State of Alabama, by Thomas Scott, Esquire, his solicitor, and filed in the clerk's office of the court aforesaid a bill in chancery against Freeman Smally and others, citizens of, and residents in, the State of Ohio, which is in words and figures following, to wit:

To the honorable Thomas Todd and Charles Willing Byrd, judges of the seventh circuit court of the United States, district of Ohio, in chancery sitting:

Humbly complaining, your orator, James McDonald, a citizen of, and resident in, the State of Alabama, showeth unto your honors, that on the

twenty-fourth day of August, in the year of our Lord one thousand seven hundred and eighty seven, a certain David Anderson, assignee, caused an entry to be made in the office of Richard C. Anderson, principal surveyor of the lands set apart to the officers and soldiers of the Virginia line on continental establishment, in the words and figures following, to wit: No. 1529, David Anderson, assignee, enters 5066⅔ acres of land, on sundry military warrants, viz. No. 835 for 200, No. 869 for 200, No. 1625 for 200, No. 1628 for 466⅔, No 1910 for 200, No. 2,589 for 100, No. 2811 for 100, No. 2831 for 200, No. 2927 for 200, No. 2953 for 200, No. 2931 for 100, No. 2983 for 100, No. 2984 for 100, No. 2985 for 100, No. 2986 for 100, No. 2992 for 100. No. 2997 for 100, No. 2998 for 100, No. 3005 for 100, No. 3022 for 100 acres, Todd's fork, a branch of the Miami, beginning opposite the beginning corner of Augustine Slaughter's entry No. 1528, running up the creek, binding thereon 1000 poles, when reduced to a straight line; thence off at right angles from the general course of the creek for quantity, as from a duly authenticated copy of said entry hereto attached, reference being thereto had for greater certainty, will appear. This location, and the entry thereof, your orator charges, was made with so much certainty and precision that others would be unable with certainty to locate other warrants on the adjacent residuum. Your orator charges, that Todd's forks, a branch of the Miami, on which the entry of Anderson's lots to lie, was, at the time, an object of general notoriety; that on the said twenty-fourth day of August, one thousand seven hundred and eighty-seven, but previous to the entry of said Anderson's location, an entry had been made on the books of the said principal surveyor, in the words and figures following, to wit, No. 1528, Augustine Slaughter enters 3000 acres of land on a military warrant, No. 3541, on Todd's fork, a branch of Miami, beginning on the upper side of said fork, seven miles above the mouth, on a straight line, running up the fork 1000 poles, when reduced to a straight line; thence off at right angles from the general course of the creek for quantity, as from a duly authenticated copy of said entry hereto attached, reference being thereto had for greater certainty, will appear; which entry, in the name of Slaughter, is the one referred to by Anderson above. Your orator charges, that previous to the time the above entries were made, the following entry was made on the books of the said principal surveyor, to wit, 21st August, 1787, No. 1494, Captain John Peyton Harrison enters 4000 acres of land on a military warrant, No. 171, on the Miami, beginning at the mouth of Todd's creek, which empties into the Miami about ten miles below at the mouth of Cæsar's creek; at the mouth of said creek, on the upper side, is a honey locust marked M., another W. E., and a sugar tree marked No. 3, running up the river 640 poles, when reduced to a straight line; thence at right angles from the general course of the river, easterly, for quantity, as from a duly authenticated copy of said entry, and of the survey made thereon, reference being thereto had for greater certainty, will appear. Your orator charges, that prior to the year one thousand seven hundred and eighty seven, the following creeks received their names, to wit: The East fork of the little Miami; Obbannan's creek, which was named after the late Col. John Obbannan; Massie's creek, which was named after the late Gen. Nathaniel Massie; Cæsar's creek, which was named after a negro man of the name of Cæsar, taken prisoner by the Indians; and Todd's fork, which was named after Robert Todd, who was a surveyor in this district, and lived and died near Lexington, Kentucky, many years since; and that each of these creeks

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have never since been called or known by any other name, as a proof of the notoriety of those streams prior to the date of Anderson's entry above. He refers to the following entries surveyed, authenticated copies of which, marked A, are annexed to, and hereby prayed to be made parts of his bill, to wit: August 2d, 1787, Captain Robert Powell enters 1000 acres of land, beginning at the mouth of the East fork, &c.; August 16th, 1787, No. 581, Lieut. Philip Clayton enters 966⅔ acres, &c., on the East fork, &c.; August 16th, 1787, Lieutenant Robert Dondridge enters 666⅔ acres, &c., on the lower side of the East fork, &c.; August 17th, 1787, No. 674, Lieutenant Mathew Clay enters 666⅔ acres, &c., on the lower side of the East fork, &c.; August 11th, 1737, Lieutenant Peter Higgins enters 1000 acres, &c., on the waters of the East fork, &c.; August 2d, 1787, No. 399, Clement Read's heirs enter 1333 acres, &c. On the east side of the little Miami river, supposed to be about 14 miles below the old Chillicothe town, beginning 400 poles below the first old sugar camp, above where Clark's war road crosses the river, &c.; August 4th, 1787, No. 598, Lieutenant John Harris enters 1666⅔ acres, &c., beginning on the lower side of the mouth of Cæsar's creek, the second large creek above the East fork of the Miami, &c.; August 16th, 1787, No. 563, John P. Griffin, assignee, enters 2000 acres of land, &c., on Cæsar's creek, emptying into the little Miami river, supposed to be upwards of half a mile below the sugar camp, taken by Clement Read's entry No. 399, &c.; August 16th, 1787, No. 565, John H. Foster enters 1000 acres, &c., on the upper side of Cæsar's creek, &c.; August 16th, 1787, No. 567 Clement Biddle, assignee, enters 966⅔ acres, &c., on the lower side of Cæsar's creek, &c.; August 16th, 1787, No. 569, Archibald Blair's heir enters 1000 acres, &c., on the lower side of Cæsar's creek, &c.; 16th August, 1787, No. 570, John Anderson enters 1000 acres, &c., on the lower side of Cæsar's creek, &c.; August 16th, 1787, No. 571, Albert Gollitin, assignee, enters 766⅔ acres, &c., on the lower side of Cæsar's creek, &c. Your orator also prays reference, as part hereof, to the survey of John Harris's entry aforesaid, No. 528 From all which it manifestly appears, that Todd's fork, called for in the above entry, in the name of the said Nathaniel Anderson, was known and recognised in the archives of the country by said name, and thereby acquired notoriety sufficient to support an entry calling for it by such name. Your orator further charges, that some time prior to the year one thousand eight hundred and six, but the precise time not known to your orator, the said David Anderson assigned to a certain G. Caldwell one thousand acres of the warrants included in the above entry, in the name of said Anderson, to wit, No. 835 for 200, No. 2939 for 100, No. 2811 for 100, No. 2983 for 100, No. 2984 for 100, No. 2992 for 100, No. 2997 for 100, No 2998 for 100, and No. 3005 for 100 acres, making together 1000 acres; that said Caldwell, without the consent of said Anderson, withdrew so much of Anderson's said entry as was covered by said warrants, but your orator charges, that said withdrawal left the residence of said original entry certain and precise as to its boundaries, so that the essential calls of the said original entry would be complied with in the survey thereof; and if it were otherwise, your orator insists, such unauthenticated withdrawal could not affect the right of Anderson to the residence of the land covered by said entry. Your orator further charges, that some time after the sale to and withdrawal by Caldwell as aforesaid, the said Anderson transferred by assignment his interest in the residue of the said original entry in his name, and the warrants on which the same were bound to certain Henry Books, that the same

was afterwards by said Books transferred as aforesaid to a certain David Bradford; and that afterwards, to wit, December 4th, 1806, the said Bradford, by Abelard Bradford, his attorney, for a valuable consideration to him in hand paid, assigned to a certain Duncan McArthur one thousand two hundred sixty-six acres and two-thirds of an acre of the warrants transferred to said Bradford, as aforesaid, included in the aforesaid entry No. 1529, in the name of said David Anderson. That afterwards, to wit, on the 9th of December, 1806, the said David Bradford, by his attorney aforesaid, transferred to a certain William Lytle his interest in the residence of the amounts included in David Anderson's entry aforesaid, as from the official certificates of the late Commissioner of the General Land Office of the United States, hereto attached, marked B, reference being had for greater certainty, will more fully appear. Your orator further charges, that he is advised, and believes it to be true, that said McArthur and Lytle, immediately after procuring the above assignment of the warrants, included in the residence of David Anderson's entry, after the withdrawal of the one thousand acres by said Caldwell, employed a surveyor to execute a survey of the land covered by the said Anderson's entry, and not withdrawn as aforesaid, but that said surveyor was prevented from executing said survey, or some of them herein after named, as defendants, who drove the said surveyor from the ground by force and violence. Your orator further charges, that on the fourth day of October, in the year of our Lord one thousand eight hundred and seven, after the one thousand acres had been withdrawn by Caldwell as aforesaid, from the said location, No 1529, a survey was duly executed for 2066⅔ acres of land, on the remainder of the said location, in the name of the said David Anderson; which said survey is in the words and figures following, that is to say, surveyed for David Anderson, assignee, 2066⅔ acres, &c., as by reference to the said survey, or to an attested copy thereof, accompanying, and which your petitioner prays may be referred to, and considered as a part of this his bill of complaint, will more fully appear; which said entry was by the survey executed as aforesaid, surveyed in all respects according to law, and the calls of the location aforesaid, as the same was left after the withdrawal of the said 1000 acres, which said survey was also duly recorded in the books of the principal surveyor aforesaid, on the thirteenth day of May, in the year of our Lord one thousand eight hundred and eight, as by reference as aforesaid will appear. Your orator further charges, that, after the execution and recording of the said survey, the plat and certificates, and also the assignment relating to the claims of the said McArthur and Lytle, as aforesaid, to the survey aforesaid, were forwarded according to law to the proper department of the Government of the United States of America; and afterwards, to wit, on the nineteenth day of May, in the year of our Lord one thousand eight hundred and seventeen, and of the independence of the United States aforesaid the forty-first, letters patent from the President of the United States of America issued to the said Duncan McArthur and William Lytle, as tenants in common, and without specifying the express quantity due to the said Duncan McArthur and to the said William Lytle, otherwise than the same was implied by the expression of the said letters patent. Whereas, your orator charges, that the interest in the land thus appropriated by the location, and more particularly designated and set forth in the survey, and granted by the patent, became and was vested in the said Duncan McArthur and the same William Lytle, undivided as aforesaid, in the proportion of 1266⅔ acres to the said Duncan McArthur.

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and 800 acres to the said William Lytle; and that they were in equity entitled to the whole of the said land appropriated by the said location, and within the boundaries of the survey aforesaid, in the proportion aforesaid, to wit, 800 acres to Lytle, and 1266⅔ acres to McArthur, which will more fully and at large appear by reference to the letters patent and certificate of the Commissioners of the General Land Office, marked B, above referred to. Your orator further charges, that for and in consideration of the sum of eleven hundred dollars, current money of the United States of America, by him paid to the said Duncan McArthur, he, the said Duncan McArthur, on the fourteenth day of November, in the year of our Lord one thousand eight hundred and twenty-three, by his certain deed, in writing, duly executed and delivered, conveyed to your orator, his heirs and assigns, for ever, all the right and title, both in law and equity, vested in him. the said Duncan McArthur, as aforesaid, as from said deed of conveyance, in the words and figures following, that is to say: This indenture, made this fourteenth day of November, in the year of our Lord one thousand eight hundred and twenty-three, between Duncan McArthur, of the county of Ross, and State of Ohio, of the one part, and James McDonald, of the county of Franklin, and the State of Alabama, of the other part, witnesseth, &c., made, &c., reference being thereto had, will more fully and at large appear, and to which your orator for greater certainty prays reference as part thereof. Your orator further charges, that, after the land embraced by the calls of the entry or location aforesaid, No. 1529, had been appropriated, and while the same was no longer vacant and unappropriated, to wit, on the nineteenth day of February, in the year of our Lord one thousand seven hundred and ninety-three, the following location or entries were made in the books of the said principal surveyor, viz. No. 1500, Stephen T. Mason, assignee, enters 1000 acres on several military warrants, viz. Nos. 2743, 3036, 3048, 3051, 3052, 3098, and 3388, on Todd's fork, a branch of the Little Miami, beginning at a black and two white oaks, in the line of Cornelius Skinner's entry, No. 1552, 134 poles from his east corner; thence N. 53 E. 400 poles; thence N. 37 W. at right angles for quantity: also No. 2227, William Boyer enters 1000 acres of land, part of military warrant No. 3671, on the waters of Todd's fork, a branch of the Little Miami, beginning at the sugar trees north corner of Stephen T. Mason's entry, No. 1506; thence N. 53 E. 400 poles; thence N. 37 E. and at right angles for quantity. Also, No. 1507, Stephen T. Mason, assignee, enters 1000 acres of land on several military land warrants, viz. Nos. 2705, 2738, 2281, and 2766, on Todd's fork, a branch of the Little Miami, beginning at two sugar trees, ash, and hoopwood, north corner of William Boyer's entry, No. 2227; thence N. 53 E. 400 poles; thence N 37 W. and at right angles for quantity. Also, on the following day, viz. the 20th of February, in the year of our Lord last aforesaid, 1793, No. 2245, William Boyer enters 1000 acres of land, part of a military warrant, No. 3671, on Todd's fork, a branch of the Little Miami, beginning at the west corner of the said Boyer's entry, No. 2227; thence N. 53 E. 400 poles; thence N. 37 W. and at right angles for quantity. Also, on the 23d day of the same month and year, No. 2249, Archibald Campbell, heir at law to Richard Campbell, deceased, enters 1000 acres, part of a military warrant, No. 3001, on the waters of Todd's fork, a branch of the Little Miami, beginning at the north corner of William Boyer's entry, No. 2227; thence N. 37 E. 400 poles; thence N. 53 E. and at right angles for quantity. Also, on the 19th day of July, in the year of our Lord one

thousand seven hundred and ninety-six, the following location, viz. No. 2754, Richard Starks enters 1000 acres of land on part of a military warrant, No. 137, beginning at the most southwardly corner of William Boyer's survey, No. 2245; thence with Boyer's line N. 37 W. 400 poles to his corner; thence S. 53 W. 400 poles from each of the given lines for quantity, which said entries, made as aforesaid, your orator charges, are one and all of them null and void, and appropriated none of the land embraced within their calls; and more particularly so, as to such parts of the said entries as interfered with so much of the entry in the name of David Anderson aforesaid, as is claimed by your orator and the said William Lytle as aforesaid. Your orator further charges, that, after the making of the said entry, No. 1506, in the name of Stephen T. Mason, the same was fraudulently surveyed in such a manner as to interfere with the location made on the No. 1529, in the name of David Anderson, as the same is now held by your orator and the said William Lytle; and such proceedings were thereupon fraudulently had, that on the twenty-ninth day of April, one thousand seven hundred and ninety-six, letters patent from the United States issued to the said Stephen T. Mason on the said survey, so interfering as aforesaid with the location in the name of David Anderson, and vested the legal title to the land included in said survey in the said Mason, which your orator charges was held in trust for him, and subject to the equity by him acquired by virtue of the location aforesaid, in the name of said Anderson, which said location was at the time, and ever since the same was made hath been, on full record in the books of the said principal surveyor, and due and legal notice of appropriation been thereby given to subsequent locators and purchasers. Your orator further charges, that Freeman Smally and Benjamin Smally are citizens and residents of the State of Ohio, and reside on the said land, claiming, as your orator is informed and believes, by virtue of some conveyance under the patentee of said survey, No. 1506; but that your orator is unable himself to set forth the title of said Freeman and Benjamin, and therefore prays that they be made defendants to this bill, and that they set forth at large the title by which they claim to hold the lands aforesaid, which is in the bill charged to be embraced in the location and survey of said Anderson, and the manner they derive the same from the said Stephen T. Mason to themselves respectively. Your orator further charges, that, after making the said entry, No. 1507, in the name of Stephen T. Mason, the same was fraudulently surveyed so as to interfere with the location No. 1529, claimed by your orator in part; and that such proceedings were subsequently had, that a patent issued to said Mason on said survey, on the 29th of April, 1796, vesting him with the legal title to the land included within the bounds of the same, which was held, as your orator charges, partly in trust for him, and subject to the equity held by him in virtue of his interest in the entry No. 1529. Your orator further charges, that Thomas Austin, William McDaniel, James Haines, and James Christy, are citizens and residents of the State of Ohio, and reside on the survey aforesaid, No. 1507, and claim title to the same; but your orator is unable to set forth the titles by them respectively claimed, or how they derived the same to the survey interfering as aforesaid with the claims of your orator. Your orator therefore prays that the said residents above named, on the survey No. 1507, be made defendants to this bill; and that they set forth and discover the titles by which they claim the land in the said survey, No. 1507, respectively, interfering as aforesaid with the claims of your orator, and how they de-

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rive the same from the patentee, the said Stephen T. Mason. Your orator further charges, that, after making of the said entry No. 2245, in the name of the said William Boyer, the same was fraudulently surveyed in such a manner as to interfere with the claim now held, in part, by your orator as aforesaid, and that such proceedings were subsequently had, that, on the twenty-sixth day of March, in the year one thousand eight hundred and two, a patent issued to the said William Boyer on the said survey, vesting in him thereby the legal title to the land included within its calls, which was held as to so much as interferes with your orator claims, in part, for him, and subject to the equity by him held in virtue of the entry aforesaid, No. 1529. Your orator further charges, that Samuel T. Lowdon, William Mason, James Morrow, senior, Ephraim Kibby, John Keenon, and George S. Haines, are citizens of, and residents in, the State of Ohio, and reside on the survey aforesaid, No. 2245, and claim title to the same. But your orator is unable to set forth the titles by them respectively claimed, or how they derive the same to the survey interfering as aforesaid with the claims of your orator. Your orator therefore prays that the above named residence on the survey No. 2245, be made defendants to this bill, and that they set forth and discover the titles by which they severally claim the land in the said survey No. 2245, interfering as aforesaid with the location in part claimed as aforesaid by your orator, and how they derive the same from the patentee, the said William Boyer. Your orator further charges, that, after making the said location, No. 2227, in the name of the said William Boyer, the same was fraudulently surveyed in such a manner as to interfere with the claims now held by your orator in part, and that such proceedings were subsequently had, that on the fifth day of April, in the year of our Lord one thousand eight hundred and two, a patent issued to the said William Boyer on the said survey, vesting in him thereby the legal title to the land included within its calls, which was held as to such part as interferes with your orator claims in trust for him, and subject to the equity by him held in virtue of the said entry or location, No. 1529. Your orator further charges, that William Pile, Richard Cast, William Hadley, John S. Thomas, Jacob Longstreth, and Isaac Wilson, senior, are citizens and residents of the State of Ohio, and reside on the survey aforesaid, No. 2227, and claim title to the same, or some part thereof; but that your orator is unable to set forth the titles by them respectively claimed, or how they derive the same to the survey interfering as aforesaid with the claims of your orator. Your orator therefore prays that the above named residents on the survey aforesaid, No. 2227, be made defendants to this bill, and that they set forth and discover the titles by which they severally claim to hold the land in the said survey, No. 2227, interfering as aforesaid with the entry in part claimed by your orator, and how they severally derive the same from the patentee, the said William Boyer. Your orator further charges, that, after the said location, No. 2249, in the name of Archibald Campbell, was made as aforesaid, the same was fraudulently surveyed in such a manner as to interfere, in part, with the claim now held by your orator, and that such proceedings were thereupon subsequently had, that a patent was fraudulently obtained on the second day of March, in the year of our Lord one thousand seven hundred and ninety-nine, in the name of Richard Campbell, as the devisee of Richard Campbell, who performed the services for the said survey, made as aforesaid, vesting thereby in the said Richard Campbell the legal title to the land included within the calls of the survey aforesaid, which was held as to

such part as interfered with the claim of your orator, in trust for him, and subject to the equity by him held in virtue of the said entry or location, No. 1529. Your orator further charges, that George Yeazle and Andrew Christy are citizens of and residents in the State of Ohio, and reside on the said survey, No. 2249, and claim title to the same. Also, your orator is informed and believes, that James Gallaway, junior, who is also a citizen of the State of Ohio aforesaid, and resident of the county of Green, in said State, claims the said survey, interfering as aforesaid, or some part thereof. But that your orator is unable to set forth with precision the titles by the said Yeazle, Christy, and Gallaway, respectively held or claimed, or how they derive the same to the survey, interfering as aforesaid with the claim of your orator, or to any part thereof. Your orator therefore prays that the said Yeazle, Christy, and Gallaway may be made defendants to this bill, and that they respectively set forth at large the titles by them respectively held to the said survey, No. 2249, interfering as aforesaid with the claim of your orator, and how they derive the same from the patentee, the said Richard Campbell. Your orator further charges, that, after making the said location or entry aforesaid, in the name of Richard Stark, No. 2754, the same was fraudulently surveyed in such a manner as to include and interfere with part of the claim now held by your orator, and that such proceedings were subsequently had, that on the twenty-fifth day of September, in the year of our Lord one thousand eight hundred and fifteen, a patent issued for the survey made as aforesaid, in the name of Richard Starks, to William Lytle, thereby vesting the legal title to the land included in the said survey in the said William Lytle, which was held as to such part thereof as interfered with the survey in the name of said David Anderson, No. 1529, or such part thereof as was claimed by means of the undivided interest held by your orator, as tenant in common with said Lytle, in trust for your orator, and subject to the equity by your orator held by virtue of the entry aforesaid, No. 1529, in part owned by him. Your orator further charges, that William Smally and Thomas Embly are citizens of and residents of the State of Ohio, and reside on the said survey interfering as aforesaid with the claim of your orator, and that they claim title thereto, or to some part thereof, as your orator is informed, by virtue of conveyances from said Lytle; as your orator is unable to set forth the titles by them respectively held to the said premises, or any part thereof, he therefore prays that the said William Smally and Thomas Embly may be made defendants to this his bill of complaint, and that they may set forth distinctly and at large the titles by them respectively held to the said survey, No. 3724, interfering as aforesaid with the claim of your orator, and how they derive the same from the patentee of the said William Lytle. Your orator therefore charges, that each of the said defendants hereinbefore named, and all of them, to wit, Freeman Smally, Benjamin Smally, Thomas Austin, William McDaniel, James Harris, James Christy, Samuel T. Lowdon, William Morrow, James Morrow, senior, Ephraim Kibby, John Kernor, George S. Harris, William Pile, Richard Cost, William Hadley, John S. Thomas, Jacob Longstreth, Isaac Wilson, senior, George Yeazle, Andrew Christy, James Gallaway, senior, William Smally, and Thomas Embly; and also the following persons, who are citizens of and residents in the State of Ohio, and whom your orator also prays may be made defendants to this his bill of complaint, to wit, John Hadley, junior, Joseph Wilson, Daniel Briggs, James T. Baker, John Galloher, Isaac Morrow, John Kiphart, James Baxton, James Abbot, Shadrick Ditto,

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John Morrow, John Hadley, senior, Jonathan Tribby, William Ruble, Thomas Constant, and Jacob Bay Miller, hold a legal title to the premises in this bill mentioned, to wit, the land embraced within the survey, executed duly and according to law, and the calls of the entry No. 1529; which survey hath been patented to the said Duncan McArthur, and the defendant, William Lytle, as aforesaid, and the said McArthur's proportion of the same conveyed by him to your orator as aforesaid, by which conveyance and the premises aforesaid, your orator is entitled to an undivided interest therein, in the proportion hereinbefore mentioned; which said titles, as held by the said defendants, are derived either under the patents granted to said Stephen T. Mason on surveys No. 1506, or No. 1507, or under the patents granted to William Boyer, on surveys No. 2245, or 2227, or under the patent granted to Richard Campbell, devisee of Richard Campbell, who performed the services on survey No. 2249, or under the patent granted to William Lytle on survey No. 2754, or are derived from void and irregular tax sales of the said land, under the entry and survey No. 2249, or the patent issued thereon as aforesaid, or some or one of them, or some part thereof, or under some other claim unknown to your orator; but which he charges expressly whether under the said claims or either of them, or under any other claim interfering in whole or in part with the entry aforesaid, No. 1529, in which your orator is interested as aforesaid, and are each and all of them of date junior to the entry No. 1529 aforesaid, and are derived under entries, which are void by reason of their being made upon land already appropriated, and no longer waste and unappropriated, or liable either to location, entry, or survey; but takened up and appropriated by the said entry No. 1529, on full record since the 24th of August, 1787, and open to inspection of locators and others on the books of the said principal surveyor, at his office, from thenceforth until this time. Your orator therefore expressly charges, that the defendants aforesaid are and all have acquired their legal titles to the premises, (an undivided interest in which is claimed by him,) with legal notice of the existence of the entry No. 1529, and of the appropriation of the land thereby. Your orator further charges, that the entry No. 1529, and each and every of the entries and surveys hereinbefore set forth as interfering with the claim set up by him as aforesaid, are situate in the county of Clinton, between the rivers Sciota and Little Miami, to the northwest side of the river Ohio, and within the jurisdiction of this court. He, your orator, further charges, that since a patent hath been granted to the said Duncan McArthur, and the said William Lytle, on the entry and survey No. 1529, in the name of said David Anderson, and the certificates of the Commissioner of the General Land Office hath been obtained as aforesaid, application hath, in a friendly manner, been made to the defendant, Lytle, for a partition of the premises aforesaid, in proportion to the interest now by your orator, and the defendant, Lytle, respectively held. But now so it is, may it please your honors, that though your petitioner was and is unable to procure a partition of the premises as aforesaid, by petition under the statute regulating the partition of lands, owing to their title as by them held in the said premises, and was also unable, in any manner, to procure a division of the same, except by application to a court of equity, yet the said defendant, Lytle, hath wholly neglected to make any division or partition of the same, and hath refused so to do; and the said William Lytle hath also refused to convey the proportion due to your orator of the elder legal title by him obtained to the premises, thus appropriated by the entry in the

name of the said David Anderson, although he procured the same to part of said premises on claims which were adverse thereto, and which originated in a void, null, and fraudulently attempt to take up and appropriate, by a subsequent entry or entries, the land which had been appropriated by the prior one in the name of the said Anderson; and the remaining defendants hereinbefore named, have, and each of them hath, although often thereto requested, in a friendly manner, refused to convey to your orator the parts by them respectively held in the said location and survey, on which the patent issued to the said McArthur, and defendant, Lytle, and which was conveyed to your orator by the said McArthur as aforesaid, though the legal title by them the said defendant, respectively, obtained, was acquiesced with a full and perfect legal knowledge and notice of the equity arising under the said claim in the name of Anderson, in which your orator had an undivided interest as hereinbefore stated. But now so it is, may it please your honors, that the said defendants are combining and confederating themselves together, and to and with divers persons at present unknown to your orator, (and whose names, when discovered, your orator prays may be inserted herein as defendants and parties to this your orator's suit, with proper and apt words to charge them,) in order to oppress and injure your orator in the premises, do absolutely refuse to convey to your orator, or to set forth in any part of the lands by them respectively claimed, or to divide the same with him in any manner, and each of them refuse the same to your orator, and are giving out in speeches, and pretending at same time, that they claim their titles, some of them by sales for taxes, others, that they derive the same under good and valid entries, which have been surveyed and patented according to law, and others by means of mere conveyance duly and regularly executed, and derived from the patentees of the land thus claimed by them as aforesaid, which hath invested them with a full and complete title both at law and in equity to the said lands, and is both superior and more perfect than the title claimed by your orator, and derived under the entry in the name of Anderson, surveyed, patented, and conveyed, as aforesaid. Whereas your orator chargeth the truth to be, that the only title to the said land on undivided interest, in which is claimed by your orator good in equity, and which will be enforced and completed by a decree of any adverse legal title, is derived under the said entry, in the name of David Anderson, claimed as aforesaid. All which actings and doings, and pretences of the said defendants and their confederates, are false and scandalous, contrary to equity and good conscience, and tend to the manifest injury and oppression of your orator. In tender consideration whereof, and as much as your orator is remediless in the premises, by the strict rules of the common law, and can only be relieved by an application to this honorable court, where matters of this sort are alone cognizable and relievable, and alone a specific conveyance and partition of the premises can be enforced, to the end, therefore, that the said defendants may all and each of them be compelled, on their several corporal oaths or solemn affirmations, true, direct, and perfect answers make to all and singular the matters aforesaid, according to the best of their knowledge, opinion, and belief, and that as fully and completely as if the same were here again repeated and interrogated, the said are more particularly required to set forth and discover the quantity of land by them respectively interfering with the survey in the name of David Anderson, No. 1529, the title by which the same is held; and from what entries and patents the same are derived; whether the legal titles by them respectively held are not of a date

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older than that claimed under the patent granted to the said Duncan McArthur, and the defendant, Lytle, and conveyed to your orator as aforesaid. The said defendant, Lytle, is more particularly to set forth and discover, if the warrants included in the survey made on entry No. 1529, in the name of David Anderson, was not assigned to himself and the said Duncan McArthur, in the proportion as hereinbefore set forth; whether a patent did not issue to them as tenants in common; and whether the proportion of the said survey really heretofore due to the said McArthur, but now to your orator, is not greater ~~that~~ than that due to the said Lytle, in the ratio of 1266⅔ to 800; if not, what proportion is due to your orator, as by him purchased, and how much to the said Lytle; whether he hath not obtained legal titles of an older date, but on junior entries to the whole or part, and what part of the said land; and whether he hath not conveyed or otherwise disposed of a great part of the land, and to what part and to whom, included in the said survey, No. 1529; whether he hath not refused or neglected (when thereto requested) to divide or partition the land aforesaid; and whether the patent granted to him and the said Duncan McArthur, as tenants in common, is not of a date junior to those issued on the entries in the bill mentioned; and whether an error hath not intervened, in not specifying in and by said patent the quantity respectively due to each, and to discover what that quantity is. Your petitioner therefore prays that the said premises may be divided between your orator and the defendant, William Lytle, or such of the defendants or other persons as he may have assigned to, in proportion of 1266⅔ to 800, the said land to be laid off with reference to quantity and situation; and also that the same may be set off in one or more tracts, and that it be not divided into several small tracts, to the diminution of its value; and that the said defendants, or those of them who are vested with the legal title to the premises, thus assigned, aparted, and set off to your orator as aforesaid, may be decreed either to withdraw so much of the entries under which they respectively claim as may be found to interfere with the lands thus assigned, aparted, and set off to your orator, or to convey the same to your orator by a good or sufficient deed, with warranty against themselves, their heirs, and persons claiming by, through, or under them, or either of them; and that they surrender and deliver up possession of the said premises to be thus assigned, or aparted, and set off as aforesaid to your orator, or his duly authorized agent, and such further and other relief in the premises, as the nature of the law may require, or shall be consistent with justice and equity, or may seem best to your honors. Your oratorprays the writs of subpœna against the said defendants in this bill named, directed to the proper officer, commanding them to appear and answer, and that they may stand to and abide such further order and decree as may be awarded. And your petitioner as in duty bound will ever pray, &c.

JAMES McDONALD.
THOMAS SCOTT,
Counsel for complainant.

December 27, 1823.

EXHIBIT A. 1787, *August 4th.* *No.* 528, 331.

Lieutenant John Harris enters 1666⅔ acres of land, part of a military warrant, No. 2252, beginning on the lower side of the mouth of Cæsar's creek, the second large brook above the East fork of Miami, running down the

meanders of the Miami 600 poles, when reduced to a straight line; thence easterly off at right angles from the general course of the river, so far that a line parallel thereto shall include the quantity.

(A copy.) RICHARD C. ANDERSON.

No. 1494. *August* 21*st*. 355 *A.*

John Peyton Harrison enters 4000 acres of land on a military warrant, No. 171, on the Miami, beginning at the mouth of Todd's creek, which empties into the Miami about 10 miles below the mouth of Cæsar's creek, At the mouth of said creek, on the upper side, is a honey locust, marked M, another W E, and a sugar tree marked No. 3, running up the river 640 poles, when reduced to a straight line; thence at right angles from the general course of the river easterly for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 1528. *August* 24*th, withdrawn, entered* 272.

Doctor Augustine Slaughter enters 3000 acres of land on a military warrant, No. 3541, on Todd's fork, a branch of Miami, beginning on the upper side of said fork, 7 miles above the mouth, on a straight line running up the fork 1000 poles, when reduced to a straight line; thence off at right angles from the general course of the creek for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 1529, 1000 *acres withdrawn. Warrants, No.* 335, 2589, 2811, 2983, 2984, 2992, 2997, 2998, 3005, *entered for G. Caldwell.* 14, 270, 508, *B.*

David Anderson, assignee, enters 3066⅔ acres of land on sundry military warrants, viz. No. 835, for 200; No. 869, for 200; No. 1625, for 200; No. 1628, for 466⅔; No. 1910, for 200; No. 2589, for 100; No. 2811, for 100; No. 2831, for 200; No. 2927, for 200; No. 2953, for 200; No. 2931, for 100; No. 2983, for 100; No. 2984, for 100; No. 2985, for 100; No. 2986, for 100; No. 2992, for 100; No. 2997, for 100; No. 2998, for 100; No. 3005, for 100; and No. 3022, for 100 acres, on Todd's fork, a branch of Miami, beginning opposite the beginning corner of Augustine Slaughter's entry No. 1528, running up the creek, binding thereon 1000 poles, when reduced to a straight line; thence off at right angles from the general course of the creek for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 528. 1666⅔ *acres.* [*For plat, see original.*]

Surveyed for John Harris 1666⅔ acres of land, part of a military warrant, No. 2252, on the Little Miami, beginning at a large red and white oak on the lower side of the mouth of Cæsar's creek, down the river S. 47 W. 8, S. 24 W. 86, S. 38 W. 16, S. 18 W. 20, S. 29 W. 20, S. 3 E. 100, S. 39 W. 44, S. 3 W. 38, S. 12 W. 18, S. 23 W. 34, S. 23 E. 44, S. 48 E. 20, S. 32 E. 54, S. 18 E. 24, S. 23 W. 34, S. 65 E. 74, S. 45 E. 31 poles, to two hackberries; thence N. 83 E. 359 poles, to a hickory, ash, and white oak;

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thence N. 7 W. 600 poles, crossing Cæsar's creek at 320 poles, to two sugar trees and a white oak; thence S. 83 W. 359 poles, crossing the creek to the beginning.

NATHANIEL MASSIE, *D. S.*

ZEDEKIAH MACKLAND, ROBERT ELLISON, } *C. C.*
ROBERT SMITH, *M. K. R.*

October 9th, 1792.

Examined and recorded, March 6th, 1793.
(A copy.) RICHARD C. ANDERSON, *S.*

No. 1494. 4000 *acres.* [*For plat, see original.*]

Surveyed for John P. Harrison 4000 acres of land on a military warrant, No 171, on the east side of the Little Miami, beginning at a honey locust, buckeye, and sugar tree, marked No. 3, honey locust W E, another M, the upper side of the mouth of Todd's fork, which empties into the Miami about twenty-five miles from the Ohio; thence up the river, N. 43 E. 54, N. 32, E. 60, N. 61 E. 38, S. 63 E. 44, N. 81 E. 138, No. 44 E. 78, N. 31 E. 54, N. 72 E. 68, N. 37 E. 40, N. 29 E. 88, N. 10 E. 36 poles, to a bur and white oak on the bank of the river; thence S. 37 E. 1032 poles, crossing branches 80 and 114 poles, Todd's fork at 610 poles, a branch at 758 poles, to three dogwood and a black oak; thence S. 53 W. 640 poles, crossing four branches at 110, 380, 474, and 560 poles, to two white oaks and a hickory; thence N. 37 W. 1032 poles, to the beginning.

NATHANIEL MASSIE, *D. S.*

THOMAS WATTS, MATHEW THOMPSON, } *C. C.*
ZEDEKIAH WADE, *M. K. R.*

October 10th, 1792.

Examined and recorded, May 18th, 1793.
(A copy.) RICHARD C. ANDERSON, *S.*

No. 1529. 2066¾ *acres.* [*For plat, see original.*]

Surveyed for David Anderson, assignee, 2066¾ acres of land, on 11 military warrants, Nos. 869, 1625, 1628, 1910, 2831, 2927, 2953, 2931, 2985, 2986, and 3022, on Todd's fork of the Little Miami, beginning at a horn beam, marked D A, two buckeyes, a hackberry, and lynn, five poles above a large sycamore, marked D A, opposite the beginning of Augustine Slaughter's entry No. 1528, seven miles on a straight line from the mouth of said creek; thence up the fork, with the meanders thereof, binding thereon, N. 25 E. 14, N. 10 E. 28, N. 54 E. 140, N. 60 E. 82, N. 67 E. 60, E. 40 S. 67, E. 50 S. 32, E. 40 S. 70, E. 56 N. 85, E. 86 poles, crossing a branch at 54 poles, N. 27 E. 68, North 40, N. 18 W. 24, North 38, N. 16 E. 68, N. 65 W. 12, N. 25 E. 36, N. 45 E. 56 poles, crossing Cæsar's creek at 20 poles, N. 40 E. 48, East 29, N. 70 E. 20, N. 27 E. 48, N. 83 E. 80, East 38, N. 10 W. 58, N. 58 E. 34 poles, to three sycamores, one of which is marked D A, and an elm in the lower line of Thomas Baytop's survey No. 2373, where the upper line of Stephen T. Mason's survey No. 1507 crosses the

fork; thence with said line, S. 37 E. 375 poles, crossing the corner of Ambrose Dudley's survey No. 2189, at 100 poles, and with his line to a stake in said line; thence S. 53 W. 1000 poles, crossing Cæsar's creek and several branches, and the East fork of Todd's fork, to four white oaks, one marked D A; thence N. 37 W. 375 poles, crossing the East fork at 295 poles, to the beginning.

WILLIAM LYTLE, *D. S.*

WILLIAM SMALLY, HENRY RENNEAU, } *C. C.*
JOHN BERKLY, *M. R. K.*

October 4th, 1807.

Examined and recorded, May 30th, 1808.
(A copy.) RICHARD C. ANDERSON, *S.*

I certify that entry No. 528, for 1666⅔ acres, in the name of John Harris, entry No. 1494, for 4000 acres, in the name of John Peyton Harrison, entry No. 1528, for three thousand acres, in the name of Augustine Slaughter, and entry No. 1529, for 3066⅔ acres, in the name of David Anderson, and surveys No. 328, 1494, and 1529, made on the entries aforesaid, are copies from the records in this office; all of which entries and surveys are annexed; and that Todd's fork of the Little Miami was known by the name of Todd's fork prior to the 24th day of August, 1787, as will appear by comparing the dates of the three last entries, viz. Nos. 1494, 1528, and 1529.

Given under my hand, this 6th day of December, 1820.
RICHARD C. ANDERSON.

This day personally appeared before me, the undersigned, a justice of the peace for the county of Jefferson, and State of Kentucky, Richard C. Anderson, and made oath the above certificate written and signed by him is true to the best of knowledge and belief.

Given under my hand, this 6th day of December, 1820.
MINOR WHITE, *J. P. J. C.*

I, Worden Pope, clerk of the county court of Jefferson county, in the State of Kentucky, do certify that the above named Minor White, whose name appears to the above certificate, is, and was at the time of signing the same, one of the acting justices of said county and State, duly commissioned, and that full faith and credit is and ought to be given to all his acts as such, as well in courts as thereout.

In testimony whereof, I have here to set my hand, and the seal of said county, this 6th of December, 1820, under the 29th year of the Commonwealth.

WORDEN POPE. [L. S.]

1793, *February 19th. No.* 1505. 419 *A.*

Stephen T. Mason, assignee, enters 1066 acres, part of a military warrant, No. 2900, on the Little Miami, beginning at the upper corner to Benjamin Taliaferro, entry No. 1519; thence up the two to the lower corner of Luke

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Cannon's survey; thence, with Cannon's line and the corner thereof, east, and from the beginning with Taliaferro's line S. 37 E. 495 poles; thence N. 53 E. 413 poles; thence northerly for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 1211. 420, *A.*

Stephen T. Mason, assignee, enters 1066⅔ acres, part of a military warrant, No. 2012, on the waters of the Little Miami, beginning at the south corner of said Mason's entry No. 1505; thence N. 53 E. 413 poles; thence S. 37 E. at right angles for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 1552. 356 *A.* 215 *C.*

Cornelius Skinner, assignee, enters 2666⅔ acres of land on a military warrant, No. 3788, on Todd's fork, a branch of the Little Miami, beginning at the south corner of StephenT. Mason's survey, No. 1211; thence S. 37 E. 1032 poles, to the east corner of Benjamin Taliaferro's entry No. 2225; thence N. 53 E. and at right angles for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 2226. 397 *A.*

Stephen T. Mason, assignee, enters 1600⅔ acres, a part of a military warrant, No. 2900, on Todd's fork, a branch of the Little Miami, beginning at three white oaks, east corner to Cornelius Skinner's entry No. 1552; thence N. 37 W. 632 poles; thence from the beginning N. 53 E. 400 poles; thence N. 37 W. for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 1506. 420 *A.*

Stephen T. Mason, assignee, enters 1000 acres on several military warrants, viz: Nos. 2763, 3036, 3048, 3051, 3052, 3098, and 3381, on Todd's fork, a branch of the Little Miami. beginning at a black and two white oaks in the line of Cornelius Skinner's entry No. 1552, N. 37 W. 134 poles from his east corner; thence N. 53 E. 400 poles; thence N. 37 W. and at right angles for quantity.

(A copy.) RICHARD. C. ANDERSON.

No. 2227. 344 *A.*

William Boyce enters 1000 acres of land, part of a military warrant, No. 3671, on the waters of Todd's fork, a branch of the Little Miami, beginning at the sugar trees north corner of Stephen T. Mason's entry No. 1506; thence N. 53 E. 400 poles; thence S. 37 E. at right angles for quantity.

(A copy.) RICHARD C. ANDERSON.

1787, *August 2d.* *No.* 399. 485 *A.*

Clement Read's heir enters 1333 acres of land, on part of a military warrant, No. 46, on the east side of the Little Miami river, supposed to be about 14 miles below the old Chillicothe town, beginning 400 poles below

the first old sugar camp, where Clark's war road crosses the river, to run up the river 550 poles, when reduced to a straight line; thence at right angles from the general course of the river for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 528. *August 4th.* 331 *A.*

Lieutenant John Harris enters 166⅔ acres of land, part of a military warrant, No. 2252, beginning on the lower side of the mouth of Cæsar's creek, the second large creek above the East fork of the Miami, running down the meanders of the Miami 600 poles, when reduced to a straight line; thence easterly, off at right angles from the general course of the river, so far that a line parallel thereto shall include the quantity.

(A copy.) RICHARD C. ANDERSON.

No. 563. *August 16th.* 332 *A.*

John T. Griffin, assignee, enters 2000 acres of land on part of a military warrant, No. 72, on Cæsar's creek, emptying into the Little Miami river, supposed to be two and a half miles below the sugar camp, taken by Clement Read's entry No. 399, beginning three miles on a straight line from the mouth of said creek on the northwesterly side, running up the creek 700 poles, when reduced to a straight line; thence at right angles from the general course of the creek, northwesterly, for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 565. 240 *acres withdrawn, entered* 444. 184 *B.*

John H. Foster enters 1000 acres of land, part of a military warrant, No. 2610, on the upper side of Cæsar's creek, beginning at the upper corner of John T. Griffin's entry No. 563, running up the creek 400 poles, when reduced to a straight line; thence at right angles from the general course of the creek, and with Griffin's line, for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 567. 332 *A.*

Clement Biddle, assignee, enters 966⅔ acres of land on several military warrants, Nos. 823, 1571, 1393, 1662, and 1555, on the lower side of Cæsar's creek, beginning opposite the upper corner of John T. Griffin's entry No. 563, running up the river 400 poles, when reduced to a straight line; thence at right angles from the general course of the creek, southeastwardly, for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 569. 332 *A.*

Archibald Blair's heir enters 1000 acres of land, part of a military warrant, No. 43, on the lower side of Cæsar's creek, beginning at the upper corner of Clement Biddle's entry No. 567, running up the creek 400 poles, when reduced to a straight line; thence at right angles from the general course of the creek, southeastwardly, and with Biddle's line, for quantity.

(A copy.) RICHARD C. ANDERSON.

087.

1787, *August 6th.* *No.* 570. 395 *A.*

John Anderson enters 1000 acres of land, part of a military warrant, No 2267, on the lower side of Cæsar's creek, beginning at the upper corner of Archibald Blair's entry No. 569, running up the creek 450 poles, when reduced to a straight line; thence at right angles from the general course of the creek, and with Blair's line, southeastwardly, for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 571. 333 *A.*

Albert Gallatin, assignee, enters 766⅔ acres of land, part of a military warrant, No. 1670, on the lower side of Cæsar's creek, beginning at the upper corner of John Anderson's entry No. 570, running up the creek 350 poles, when reduced to a straight line; thence at right angles from the general course of the creek, and with Anderson's southeasterly line, for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 1494. *August 21st.* 335 *A.*

Captain John Payton Harrison enters 4000 acres of land on a military warrant, No. 171, on the Miami, beginning at the mouth of Todd's creek, which empties into the Miami about 10 miles below the mouth of Cæsar's creek; at the mouth of said creek, on the upper side, is a honey locust, marked M, another W E, and a sugar tree, marked No. 3, running up the river 640 poles, when reduced to a straight line; thence at right angles from the general course of the river, easterly, for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 1528. *August 24th, withdrawn, entered* 272.

Augustine Slaughter enters 3000 acres of land on a military warrant, No. 3541, on Todd's fork, a branch of Miami, beginning on the upper side of said fork, 7 miles above the mouth, on a straight line running up the fork 1000 poles, when reduced to a straight line; thence at right angles from the general course of the creek for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 1529. 1000 *acres withdrawn, entered Nos.* 835, 2589, 2811, 2983, 2984, 2992, 2997, 2998, 3005, *entered in the name of G. Caldwell, page* 270, 508, *B.*

David Anderson, assignee, enters 3066⅔ acres of land on sundry military warrants, viz. No. 835, for 200; No. 869, for 200; No. 1625, for 200; No. 1628, for 466⅔; No. 1910, for 200; No. 2589, for 100; No. 2811, for 100; No. 2831, for 200; No. 2927, for 200; No. 2953, for 200; No. 2931, for 100; No. 2983, for 100; No. 2984, for 100; No. 2985, for 100; No. 2986, for 100; No. 2992, for 100; No. 2997, for 100; No. 2998, for 100; No. 3005, for 100; and No. 3022, for 100 acres, on Todd's fork, a branch of Miami, beginning opposite the beginning corner of Augustine Slaughter's entry No. 1528, running up the creek, binding thereon, 1000 poles, when reduced to a straight line; thence off at right angles from the genera course of the creek for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 1519. 1793, *February 19th.* 335 *A.*

Benjamin Taliaferro enters 995 acres of land on part of a military warrant, No. 559, on the Little Miami, beginning at the upper corner of John P. Harrison's survey No. 1494, running up the river 1000 poles, when reduced to a straight line; thence S. 37 E. 895 poles; thence S. 53 W. 460 poles, to the beginning.

(A copy.) RICHARD C. ANDERSON.

1787, *August 2d.* *No.* 430. 286 *A.*

Captain Robert Powell enters 1000 acres of land, part of a military warrant, No. 903, beginning at the mouth of the East fork of the Miami, on the upper side thereof, running up the West fork 420 poles, when reduced by a straight line; thence easterly off at right angles from the general course of the river, so far that a line parallel thereto will include the quantity.

(A copy.) RICHARD C. ANDERSON.

No. 581. *August 6th.* 376 *A.*

Lieutenant Philip Clayton enters 966⅔ acres of land, part of a military warrant, No. 794, on the east fork of the Little Miami, about three miles below the mouth of Cloomlick creek, beginning at the lower end of the Horse Shoe Bottom: about a half a mile above there is a beach tree, marked *Horse Shoe Bottom;* thence to run up the creek 500 poles on a straight line; thence off at right angles for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 593. 267 *A.*

Lieutenant Robert Dandridge enters 666⅔ acres of land, part of a military warrant, No. 727, on the lower side of the East fork of the Miami, beginning at the lower end of the first bottom above the mouth of Lucy's run, running up the creek 400 poles, when reduced to a straight line; thence at right angles from the general course of the creek, southerly, for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 674. *August 17th.* 268 *A.*

Lieutenant Mathew Clayton enters 666⅔ acres of land, part of a military warrant, No. 52, on the lower side of the East fork of Miami, beginning at the lower end of the first bottom from the mouth, running up the creek 360 poles, when reduced to a straight line; thence at right angles from the general course of the creek, southwesterly, for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 958. *August 11th, 90 acres withdrawn, entered* 423. 271 *A.*

Lieutenant Peter Higgins enters 1000 acres of land, part of a military warrant, No. 771, on the waters of the East fork of the Miami, about 6 miles from the river, and half a mile from the East fork, beginning 40 poles south of a spring, where there are several beeches marked, one I. O. B., and another R. Todd, running east 200 poles; thence at right angles, northerly, for quantity.

(A copy.) RICHARD C. ANDERSON.

688.

1793. *No.* 2225. *February* 19*th.* 336 *A.*

Benjamin Taliaferro enters 3671¾ acres, part of a military warrant, No. 559, on Todd's fork, a branch of the Little Miami, beginning at the beginning corner of said Taliaferro's entry of 995 acres, a burr and white ; thence N. 53° E. 460 poles; thence S. 37° E. at right angles for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 2245. *February* 20*th.* 344 *A.*

William Boyce enters 1000 acres of land, part of a military warrant, No. 3671, on Todd's fork, a branch of the Little Miami, beginning at the west corner of said Boyce's entry No. 2227; thence N. 53 E. 400 poles; thence N. 37° W. and at right angles for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 2249. *February* 23*d.* 345 *A.*

Archibald Campbell, heir at law to Richard Campbell, deceased, enters 1000 acres, part of a military warrant, No. 3001, on the waters of Todd's fork, a branch of the Little Miami, beginning at the north corner of William Boyce's entry No. 2227; thence S. 37° E. 400 poles; thence N. 53° E. and at right angles for quantity.

(A copy.) RICHARD C. ANDERSON.

1796. *No.* 2754. *July* 19*th,* 200 *acres withdrawn, entered* 11. 6. 43 *B.*

Richard Stark enters 1000 acres of land, on part of a military warrant, No. 137, beginning at the most southwardly corner of William Boyce's survey No. 2245; thence with Boyce's line N. 37 W. 400 poles to his corner; thence S. 53 W. 400 poles from each end of the given line for quantity.

(A copy.) RICHARD C. ANDERSON.

1787. *No.* 550. *August* 14*th.* 433.

Richard C. Anderson and Mayo Carrington enter 4000 acres of land, part of a military warrant, No. 856, on the waters of the Miami, beginning three miles southeast of Col. Logan's encampment in October, 1786, where a man deserted from; running S. W. 400 poles, and from the beginning N. E. 400 poles; thence at right angles S. E. from each end of the line for quantity.

(A copy.) RICHARD C. ANDERSON.

No. 1494. 4000 *acres.* [*For plat, see original.*]

Surveyed for John P. Harrison 4000 acres of land, on a military warrant, No. 171, on the east side of the Little Miami, beginning at a honey locust, buckeye, and sugar tree, marked No. 3, honey locust W E, another M, on the upper side of the mouth of Todd's fork, which empties into the Miami about twenty-five miles from the Ohio; thence up the river, N. 43 E. 56, N. 32 E. 60, N. 61 E. 38, S. 65 E. 44, N. 81 E. 138, N. 44 E. 78, N. 31 E. 54, N. 72 E. 68, N. 37 E. 40, N. 29 E. 88, N. 10 E. 36 poles, to a bur and white oak on the bank of the river; thence S. 37 E. 1032 poles, crossing branches at 80 and 114 poles, Todd's fork at 610 poles, a branch at 758 poles,

880

to three dogwoods and a black oak; thence S. 53 W. 640 poles, crossing four branches at 110, 380, 474, and 560 poles, to two white oaks and a hickory; thence N. 37 W. 1032 poles, to the beginning.

NATHANIEL MASSIE, *D. S.*

THOMAS WATTS,
MATHEW THOMPSON, } *C. C.*
ZEPHANIAH WADE, *M.*

October 10th, 1792.

Examined: Recorded, May 18th, 1793.

RICHARD C. ANDERSON, *S.*

STATE OF KENTUCKY, *Jefferson county, ss.*

Before me, Benjamin Head, a justice of the peace in and for the county of Jefferson aforesaid, personally came Col. Richard C. Anderson, principal surveyor of the lands between the Scioto and Little Miami rivers, which were reserved by the State of Virginia to satisfy the bounty lands due to her officers and soldiers who served in the revolutionary war on continental establishment, who, being duly sworn by me according to law, deposeth and saith, that the foregoing copies of entries, Nos. 399, 430, 528, 581, 593, 674, 958, 2225, 2245, 2249, 2754, 550, 1505, 1211, 1552, 2226, 1506, 2227, 563, 565, 567, 569, 570, 571, 1494, 1528, 1529, 1519, and survey 1494, have been by him carefully examined and compared with the said original entries and surveys, as recorded in his office, and that they are true and correct copies of the said entries and surveys from the said record.

RICHARD C. ANDERSON.

Sworn to and subscribed before me, this first day of April, 1822.

BENJAMIN HEAD, *J. P. J. C.*

LAND OFFICE, MILITARY WARRANT No. 1628.

To the principal surveyor of the lands set apart for the officers and soldiers of the Commonwealth of Virginia: This shall be your warrant to survey and lay off, in one or more surveys, for Stephen Smithers, his heirs or assigns, the quantity of four hundred and sixty-six and two-thirds acres of land, due unto the said Stephen Smithers in consideration of his services for the war, and seven years as a sergeant in the continental line, agreeable to a certificate from the governor and council received into the land office.

Given under my hand, and the seal of the said office, this 22d day of August, in the year one thousand seven hundred and eighty-three.

JOHN HARVIE, *Re. L. Off.* [L. S.]

I do hereby relinquish all my right and title to the within four hundred sixty-six and two-thirds acres of land to Joseph Clark, his heirs or assigns, for ever, for value received.

STEPHEN SMITHERS.

Test: BENJAMIN AUSTIN.

October 13th, 1783.

689.

October 19th, '83. I assign to Mr. Henry Banks my right and title to the within warrant.

his
JOSEPH × CLARK.
mark.

Witness: GERARD BANKS, Jun.

I assign the within land warrant to David Anderson, his heirs and assigns, for ever.

H. BANKS.

LAND OFFICE, MILITARY WARRANT No. 869.

To the principal surveyor of the lands set apart for the officers and soldiers of the Commonwealth of Virginia: This shall be your warrant to lay off and survey, in one or more surveys, for Robert Ironmonger, his heirs or assigns, the quantity of two hundred acres of land, due unto the said Robert Ironmonger in consideration of his services, for three years, as a fife major in the Virginia continental line, agreeable to a certificate from the governor and council received into the land office.

Given under my hand, and the seal of said office, this 19th day of June, in the year one thousand seven hundred and eighty-three.

JOHN HARVIE, *Re. L. Off.* [L. S.]

I assign my right of the within to Mr. Henry Banks.

his
ROBERT + IRONMONGER.
mark.

Lieut. PAT. BOURK.

I assign my right of within to David Anderson.

HENRY BANKS.

Test: JAMES BRUCE, JOHN BROWN.

LAND OFFICE, MILITARY WARRANT No. 2831.

To the principal surveyor of the land set apart for the officers and soldiers of the Commonwealth of Virginia: This shall be your warrant to survey and lay off, in one or more surveys, for John Depriest, assignee of Anderson Freeman, his heirs or assigns, the quantity of two hundred acres of land, due unto the said John Depriest in consideration of services of Anderson Freeman, for three years, as a sergeant major in the Virginia continental line, agreeable to a certificate from the governor and council received into the land office.

Given under my hand, and the seal of the said office, this 26th day of March, in the year one thousand seven hundred and eighty-four.

JOHN HARVIE, *Re. L. Off.* [L. S.]

I assign the within to David Anderson, his heirs and assigns, for value received.

JOHN DEPRIEST.

Test: LAIN JOHNSON.

LAND OFFICE, MILITARY WARRANT No. 2986.

To the principal surveyor of the lands set apart for the officers and soldiers of the Commonwealth of Virginia: This shall be your warrant to sur-

vey and lay off, in one or more surveys, for Mathew Mount, his heirs or assigns, the quantity of one hundred acres of land, due unto the said Mathew Mount in consideration of his services, for three years, as a soldier in the Virginia continental line, agreeable to a certificate from the governor and council received into the land office.

Given under my hand, and the seal of the said office, this 21st day of April, in the year one thousand seven hundred and eighty-four.

JOHN HARVIE, *Re. L. Off.* [L. S.]

For value received, I assign my right and title of the within land warrant to David Anderson, his heirs and assigns, for ever.

MATHEW MOUNT.

Test: LAIN JOHNSON.

LAND OFFICE, MILITARY WARRANT No. 3022.

To the principal surveyor of the lands set apart for the officers and soldiers of the Commonwealth of Virginia: This shall be your warrant to survey and lay off, in one or more surveys, for Edward Valentine, assignee of James White, his heirs or assigns, the quantity of one hundred acres of land, due unto the said Edward Valentine in consideration of said James White's services, for three years, as a soldier in the Virginia continental line, agreeable to a certificate from the governor and council received into the land office.

Given under my hand, and the seal of the said office, this 26th day of April, in the year of our Lord one thousand seven hundred and eighty-four.

JOHN HARVIE, *Re. L. Off.* [L. S.]

For value received, I assign the within land warrant to David Anderson, his heirs or assigns, for ever.

EDWARD VALENTINE.

Test: LAIN JOHNSON.

LAND OFFICE, MILITARY WARRANT No. 1910.

To the principal surveyor of the lands set apart for the officers and soldiers of the Commonwealth of Virginia: This shall be your warrant to lay off and survey, in one or more surveys, for Smith Kent, his heirs or assigns, the quantity of two hundred acres of land, due unto the Smith Kent in consideration of his services, for three years, as a sergeant in the Virginia continental line, agreeable to a certificate from the governor and council received into the land office.

Given under my hand, and the seal of the said office, this 24th day of October, in the year one thousand seven hundred and eighty-three.

JOHN HARVIE, *Re. L. Off.* [L. S.]

I do hereby make over my right and title of the within warrant to Mr. Henry Banks.

SMITH KENT.

Test: JAMES BRUCE, JOHN BROWN.

October 27th, 1783.

I assign my right and title to David Anderson.

HENRY BANKS.

690.

LAND OFFICE, MILITARY LAND WARRANT No. 1625.

To the principal surveyor of the land set apart for the officers and soldiers of the Commonwealth of Virginia: This shall be your warrant to survey and lay off, in one or more surveys, for James Wood, his heirs or assigns, the quantity of two hundred acres of land, due unto the said James Wood in consideration of his services for the war as a soldier in the Virginia continental line, agreeable to a certificate from the governor and council received into the land office.

Given under my hand, and the seal of the said office, this 22d day of August, in the year one thousand seven hundred and eighty-three.

JOHN HARVIE, *Re. L. Off.* [L. S.]

I do hereby assign and make over the within warrant of two hundred acres to James Fear, or his assigns. October 5th, 1783.

his
JAMES × WOOD.
mark.

Test: OWEN NEWMAN.

I assign the within warrant to Joseph Clark, or his assigns.

JAMES FEAR.

Test: THOMAS RIPLEY.

I assign to Mr. Henry Banks my right and title.

his
JOSEPH + CLARK.
mark.

Witness: JAMES BRUCE.

I assign the within to David Anderson, his heirs and assigns, for ever.

H. BANKS.

LAND OFFICE, MILITARY WARRANT No. 2985.

To the principal surveyor of the lands set apart for the officers and soldiers of the Commonwealth of Virginia: This shall be your warrant to survey and lay off, in one or more surveys, for Zachariah Butt, his heirs or assigns, the quantity of one hundred acres of land, due unto the said Zachariah Butt in consideration of his services, for three years, as a soldier in the Virginia continental line, agreeable to a certificate from the governor and council received into land office.

Given under my hand, and the seal of the said office, this 21st day of April, in the year one thousand seven hundred and eighty-four.

JOHN HARVIE, *Re. L. Off.* [L. S.]

For value received, I assign the within to David Anderson.

ZACHARIAH BUTT.

Test: LAIN JOHNSON.

LAND OFFICE, MILITARY WARRANT No 2931.

To the principal surveyor of the land set apart for the officers and soldiers of the Commonwealth of Virginia: This shall be your warrant to survey and lay off, in one or more surveys, for Edward Valentine, assignee of John Foster, his heirs or assigns, the quantity of one hundred acres of land,

due unto the said Valentine in consideration of services of John Foster, for three years, as a soldier in the Virginia continental line, agreeable to a certificate received from the governor and council into the land office.

Given under my hand, and the seal of said office, this 15th day of April, in the year one thousand seven hundred and eighty-four.

JOHN HARVIE, *Re. L. Off.* [L. S.]

For value received, I assign the within land warrant to David Anderson, his heirs and assigns, for ever.

EDWARD VALENTINE.

Test: LAIN JOHNSON.

LAND OFFICE, MILITARY WARRANT No. 2927.

To the principal surveyor of the lands set apart for the officers and soldiers of the Commonwealth of Virginia: This shall be your warrant to lay off and survey, in one or more surveys, for Thomas Roberts, his heirs or assigns, the quantity of two hundred acres of land, due unto the said Thomas Roberts in consideration of his services, for three years, as a sergeant in the Virginia continental line, agreeable to a certificate from the governor and council received into the land office.

Given under my hand, and the seal of the said office, this 13th day of April, in the year one thousand seven hundred and eighty-four.

JOHN HARVIE, *Re. L. Off.* [L. S.]

For value received, I do assign the within land warrant to Henry Banks, as witness my hand, this 13th day of April, 1784.

THOMAS ROBERTS.

Test: CHARLES LEWIS.

I assign the within land warrant to David Anderson, his heirs and assigns, for ever, for value received.

HENRY BANKS.

Test: JAMES BRUCE.

LAND OFFICE, MILITARY WARRANT No. 2953.

To the principal surveyor of the lands set apart for the officers and soldiers of the Commonwealth of Virginia: This shall be your warrant to survey and lay off, in one or more surveys, for Edward Valentine, assignee of Lindsey Arnold, his heirs or assigns, the quantity of two hundred acres of land, due unto the said Edward Valentine in consideration of Lindsey Arnold's services for the war as a soldier in the Virginia continental line, agreeable to a certificate from the governor and council received into the land office.

Given under my hand, and the seal of the said office, this 17th day of April, in the year one thousand seven hundred and eighty-four.

JOHN HARVIE, *Re. L. Off.* [L. S.]

For value received, I assign my right and title to the within land warrant to David Anderson.

EDWARD VALENTINE.

Test: LAIN JOHNSON.

691.

Know all men by these presents, that I, Robert Anderson, heir at law to David Anderson, deceased, do hereby give, grant, assign, and convey, unto Henry Banks, his heirs or assigns, all my right and title and interest to the following military land warrants, which were entered in the office of Richard C. Anderson, in July, one thousand seven hundred and eighty-four, being for value received of said Banks.

	Acres.
A warrant to Edward Valentine, ass'ee of Lindsey Arnold, (No. 2953)	200
A warrant to Zachariah Butt, (No. 2985) - - - - - -	100
A warrant to Edward Valentine, assignee of John Foster, (No. 2931)	100
Do. do. do. James White, (No. 3022)	100
A warrant to John Depriest, assignee of Anderson Freeman, (No. 2831) - - - - - - - - - -	200
A warrant to Thomas Roberts, (No. 2927) - - - - - -	200
A warrant to James Wood, (No. 1625) - - - - - -	200
A warrant to Robert Ironmonger, (No. 869) - - - - -	200
A warrant to Mathew Mount, (No. 2986) - - - - - -	100
A warrant to Smith Kent, (No. 1910) - - - - - - -	200
A warrant to Stephen Smithers, (No. 1628) - - - - -	466⅔
	2066⅔

In all amounting to two thousand and sixty-sixt wo-thirds acres, and to the whole of which I do bind myself, my heirs, &c. to secure the said Banks in full and proper right.

Witness my hand and seal, at Richmond, March 1st, 1786.

ROBERT ANDERSON. [SEAL.]

Test: JOHN P. ANDERSON, CUTHT. BANKS.

I do hereby assign and convey to David Bradford, his heirs or assigns, my right, title, and interest to the within mentioned lands, being for value received.

HENRY BANKS.

Test: CATH. BANKS.

October 28th, 1786.

For value received, I do hereby assign unto Duncan McArthur the following Virginia military land warrants, which are now in Col. Richard C. Anderson's office, viz. No. 869, for 200 acres, granted to Robert Ironmonger; No. 1625, for 200 acres, granted to James Wood; No. 1628, for 466⅔ acres, granted to Stephen Smithers; No. 1910, for 200 acres, granted to Smith Kent; and No. 2831, for 200 acres, granted to John Depriest, assignee of Anderson Freeman; which warrants were assigned to David Anderson, from said Anderson to Henry Banks, and from said Banks to David Bradford.

ABELARD BRADFORD,
For David Bradford.

Test: COLLIN McCALLEAN, J. WORTHINGTON.

December 4, 1806.

For value received, I do hereby assign to William Lytle eight hundred acres of the warrants now in Col. Richard C. Anderson's office, which were assigned by David Anderson to Henry Banks, and by said Banks to David

Bradford; which warrants now remain entered in the name of said David Anderson on Todd's fork of Miami, known in the said office by No. 1529; and do hereby authorize the proper officers to grant a patent or patents to the said William Lytle for eight hundred acres accordingly.

Given under my hand and seal, this 9th December, 1806.

For David Bradford.
ABELARD BRADFORD, [L. S.]
His attorney in fact.

Test: JOHN MACHIR, DUNCAN MCARTHUR.

VIRGINIA, sct.

At at court held for Bedford county, at the court-house, the 24th day of July, 1786, Robert Anderson comes into court, and proves himself to be the heir at law of David Anderson, deceased, which, on his motion, is admitted to record.

In testimony whereof, I have hereunto set my hand, and affixed my seal of office, this 13th day of February, one thousand eight hundred and seventeen.

JA. STEPTOE, *C. B. C.* [L. S.]

BEDFORD COUNTY, sct.

As presiding justice of the court of the county aforesaid, I certify the above attestation of James Steptoe, clerk of said county court, is in due form of law, and that full faith and credit is and ought to be given to his official attestation. Certified under my hand, this 24th day of February, 1817.

THOMAS LOGWOOD.

I certify that the preceding pages, numbered from one to fourteen, inclusive, contain copies of the papers on file in this office, on which survey, numbered 1529, for 2066⅔ acres in the name of David Anderson, was patented to Duncan McArthur and William Lytle.

GEORGE GRAHAM, *Commissioner.*

GENERAL LAND OFFICE, *April* 13, 1826.

James Monroe, President of the United States of America, to all whom these presents shall come, greeting:

Know ye, that in consideration of military services performed by Robert Ironmonger, (a fife major for three years,) by Stephen Smithers, (a sergeant for the war, and seven years,) by Anderson Freeman, Smith Kent, and Thomas Roberts, (sergeants for three years,) by James Wood and Lindsey Arnold, (soldiers for the war,) and by John Foster, Zachariah Butts, Mathew Mount, and James White, (soldiers for three years,) to the United States in the Virginia line on continental establishment; and in pursuance of an act of the Congress of the United States, passed on the 10th day of August, in the year 1790, entitled "An act to enable the officers and soldiers of the Virginia line on continental establishment to obtain titles to certain lands lying northwest of the river Ohio between the Little Miami and Scioto," and other acts of the said Congress amendatory of the said act, there is granted by the United States unto Duncan McArthur and William Lytle a certain tract of land, containing two thousand sixty-six and two-thirds acres, situate between the Little Miami and Scioto rivers, northwest of the river Ohio,

692.

by survey, bearing date the fourth day of October, in the year one thousand eight hundred and seven, and bounded and described as follows, to wit: Survey of two thousand sixty-six and two-thirds acres of land, on several military warrants, viz. 200 acres on warrant No. 869, 466⅔ acres on warrant No. 1628, 200 acres on warrant No. 2831, 200 acres on warrant No. 1910, 200 acres on warrant No. 2927, 200 acres on warrant No. 1625, 200 acres on warrant No. 2953, 100 acres on warrant No. 2931, 100 acres on warrant No. 2985, 100 acres on warrant No. 2986, and 100 acres on warrant No. 3022, the rights to which have been severally assigned to the said Duncan McArthur and William Lytle, on Todd's fork of the Little Miami, beginning at a horn beam, marked D A, two buckeyes, a hackberry and lynn, five poles above a large sycamore, marked D A, opposite the beginning corner of Augustine Slaughter's entry No. 1528, seven miles on a right line from the mouth of said creek; thence up the fork, with the meanders thereof, binding thereon, N. 25° E. 14, N. 10° E. 28, No. 54° E. 140, N. 60° E. 82, N. 67° E. 60, East 40, S. 67° E. 50, S. 32° E. 40, S. 70° E. 56, N. 85° E. 86 poles, crossing a branch at 54 poles, N. 27° E. 68, North 40, N. 18 W. 24, North 38, N. 16° E. 68, N. 65 W. 12, N. 25° E. 36, N. 45° E. 56 poles, crossing Cowan's creek at 20 poles, N. 40° E. 48, East 29, N. 70° E. 20, N. 27° E. 48, N. 83° E. 80, East 32, N. 10° W. 58, N. 58° E. 34 poles, to three sycamores, one of which is marked D A, and an elm in the lower line of Thomas Baytop's survey No. 2373, where the upper line of Stephen T. Mason's survey No. 1507 crosses the fork; thence with said line S. 37° E. 375 poles, passing the corner of Ambrose Dudley's survey No. 2189 at 100 poles, and with his line to a stake in said line; thence S. 53° W. 1000 poles, crossing Cowan's creek and several branches, and the East fork of Todd's fork, to four white oaks, one marked D A; thence N. 37° W. 375 poles, crossing the East fork at 295 poles, to the beginning, with appurtenances; to have and to hold the said tract of land, with the appurtenances, unto the said Duncan McArthur and William Lytle, and their heirs and assigns, for ever, as tenants in common, and not as joint tenants.

In witness whereof, the said James Monroe, President of the United States of America, hath caused the seal of the General Land Office to be hereunto affixed, and signed the same with his hand, at the city of Washington, the nineteenth day of May, in the year of our Lord 1817, and of the independence of the United States of America the forty-first.

JAMES MONROE. [L. S.]

By the President:
JOSIAH MEIGS,
Commissioner of the General Land Office.

I certify that Robert Ironmonger, Stephen Smithers, Anderson Freeman, Smith Kent, Thomas Roberts, James Wood, Lindsey Arnold, John Foster, Zachariah Butt, Mathew Mount, and James White, were originally entitled to the bounty land granted by the within patent to Duncan McArthur and William Lytle, who claim under the said Ironmonger, Smithers, Freeman, Kent, Roberts, Wood, Arnold, Foster, Butt, Mount, and White.

Given at the General Land Office of the United States, this 19th of May, 1817. JOSIAH MEIGS.

Recorded in the General Land Office, in vol. 8, page 183, of patents of land granted to the Virginia line on continental establishment.

NS. B. VAN ZANDT.

No. 386. Entered for record 25th of December, 1817. Recorded 29th of the same month in book B, pages 382 and 383, one of the Land Records for Clinton county, Ohio.

JAS. W. MAGA, *R. C. C.*

This indenture, made this fourteenth day of November, in the year of our Lord one thousand eight hundred and twenty-three, between Duncan McArthur, of the county of Ross, and State of Ohio, of the one part, and James McDonald, of the county of Franklin, and State of Alabama, of the other part, witness , that the said Duncan McArthur, for and in consideration of the sum of eleven hundred dollars, current money of the United States of America, to him in hand paid, it being the amount of money until this day due to the said McDonald from the said McArthur for survey No. 142 of one thousand acres of land, which was entered and surveyed in the name of Thomas Sears, and patented to the said McDonald on the south fork of Mad river or Beaver creek, in the county of Clark, and State of Ohio, and conveyed by the said McDonald, and Eliza A. his wife, unto the said McArthur, on the 16th day of July, 1822, the receipt of the said sum of eleven hundred dollars, the said McArthur doth hereby acknowledge, and for ever acquit and discharge the said James McDonald, his heirs, and executors and administrators, hath granted, sold, aliened, confirmed, and enfeoffed, and for ever quit claim, and by these presents doth, grant, bargain, sell, alien, confirm, enfeoff, and for ever quit claim, unto the said James McDonald, his heirs and assigns, for ever, of, in, and to all the right and title, both in law and equity, vested in the said Duncan McArthur by a patent from the United States for survey No. 1529, which was entered and surveyed in the name of David Anderson, granted to the said Duncan McArthur and William Lytle, their heirs and assigns, for ever, as tenants in common, and not as joint tenants, together with all the equitable right and interest of the said Duncan McArthur to the land warrants, entry, and survey, upon which his claim or title to the said land, or to an undivided interest of one thousand two hundred and sixty-six acres and two-thirds of an acre in the said land, is vested by virtue of an assignment for 1266⅔ acres of the land warrants upon which the said entry, survey, and patent is founded, made to him, the said McArthur, on the 4th day of December, 1806, by Abelard Bradford, for David Bradford; which undivided survey, tract or parcel of land is described as follows, to wit: Survey of two thousand sixty-six and two-thirds acres of land, on several military warrants, &c. on Todd's fork of the Little Miami, beginning at a horn beam, marked D A, two buckeyes, a hackberry, and lynn, five poles above a large sycamore, marked D A, opposite the beginning corner of Augustine Slaughter's entry No. 1528, seven miles on a straight line from the mouth of said creek; thence up the fork, with the meanders thereof, binding thereon, N. 15° E. 14, N. 10° E. 28, N. 45° E. 140, N. 60° E. 82, N. 67° E. 60, East 40, S. 67° E. 50, S. 32° E. 40, S. 70° E. 56, N. 85° E. 86 poles, crossing a branch at 54 poles, N. 27° E. 60, North 43, N. 18° W. 24, North 38, N. 16° E. 68, N. 65° W. 12, N. 25° E. 36, N. 45° E. 56 poles, crossing Cowan's creek at 20 poles, N. 40° E. 48, East 29, N. 70° E. 20, N. 27° E. 48, N. 83° E. 80, East 32, N. 10° W. 58.

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N. 58° E. 34 poles, to three sycamores, one of which is marked D A, and an elm in the lower line of Thomas Baytop's survey No. 2373, where the upper line of Stephen T. Mason's survey No. 1507 crosses the fork; thence with said line S. 37° E. 375 poles, passing the corner of Ambrose Dudley's survey No. 2189 at 100 poles, and with his line to a stake in said line; thence S. 53° W. 1000 poles, crossing Cowan's creek and several branches, and the East fork of Todd's fork, to four white oaks, one marked D A; thence N. 37° W. 375 poles, crossing the East fork at 295 poles, to the beginning, with the appurtenances; to have and to hold the said undivided interest of the said McArthur in the above described tract of land, with the appurtenances, unto the said James McDonald, subject, however, to whatever partition or division of said survey of 2066⅔ acres of land that may be made by the commissioners appointed or who may be appointed for the partition of said land by the court of common pleas of the said county of Clinton, and State of Ohio, between the said Duncan McArthur and the said William Lytle, in pursuance of a bill in chancery, filed by the said McArthur against the said Lytle, previous to the term of said court in August last, for the partition of said land, which cause is now pending and undetermined in said court. So it being, therefore, the understanding of the parties to this indenture, that the said McDonald is to have the benefit of the partition or division of the said survey of 2066⅔ acres of land, which may be made by the said commissioners between the said McArthur and the said Lytle; and whatever part, parcels, or quantity of said survey may be set off by said commissioners for the said McArthur, is to be a more full and perfect description of the land and premises, or the interest of the said McArthur by this indenture conveyed to the said McDonald.

In witness whereof, I, the said Duncan McArthur, have hereunto set my hand and seal, the day and year first above written.

DUNCAN McARTHUR. [SEAL.]

The signing and sealing hereof acknowledged in the presence of us,
THOMAS J. McARTHUR,
W. McDONALD.

STATE OF OHIO, *Ross county, ss.*

Personally appeared before me, the subscriber, a justice of the peace in the county aforesaid, the above named Duncan McArthur, and acknowledged the above signing and sealing of the foregoing indenture to be his act and deed for the purpose therein mentioned.

Given under my hand and seal, this 14th day of November, 1823.

LEWIS BELT, *J. P.* [SEAL.]

RECORDER'S OFFICE, *Clinton county, Ohio.*

This deed was entered for record 9th August, 1824, and recorded the same day in book D, pages 103 and 104, one of the Land Records for Clinton county aforesaid.

JOHN McMORRIS, *Recorder C. C.*

THE UNITED STATES OF AMERICA, *District of Ohio, sct.—To the marshal of said district, greeting:*

We command you to summon Freeman Smally, Benjamin Smally, Thomas Austin, William McDaniel, James Harris, James Christie, Samuel T.

Lowden, William Morrow, James Morrow, senior, Ephraim Kibby, John Kerner, George Harris, William Pilo, Richard Cast, William Hadley, John S. Thomas, Jacob Longstreth, Isaac Wilson, senior, George Yeazle, Andrew Christie, James Galloway, junior, William Smally, Thomas Embly, William Lytle, John Hadley, junior, Joseph Wysong, Daniel Briggs, James T. Baker, John Galloher, Isaac Morrow, John Kephart, Jane Buxton, James Abbot, Shadrick Ditto, John Morrow, John Hadley, senior, Jonathan Tribby, William Ruble, Thomas Constant, and Jacob Miller, citizens of, and residents in, the State of Ohio, if they be found in your bailiwick, to appear before the judges of the circuit court of the United States for the seventh circuit, and district of Ohio aforesaid, at Columbus, on the first Monday in the month of February next, at February rules, to answer James McDonald, a citizen of, and resident in, the State of Alabama, of a certain bill in chancery by him against you exhibited, and this you shall in nowise omit, under the penalty of the law: have then there this writ.

Witness the honorable John Marshall, Chief Justice of the United States, this 30th day of December, 1823, and in the 48th year of the American independence.

Att. HARVEY D. EVANS, *Clerk.* [L. S.]

And afterwards, to wit, at rules held in the clerk's office of said court, in the month of February aforesaid, in the year of our Lord one thousand eight hundred and twenty-four, came the marshal, and returned the writ aforesaid, to him in form aforesaid directed, with the following return endorsed thereon, to wit:

Summoned January 2d, 1824, Freeman Smally, Benjamin Smally, Thomas Austin, William McDaniel, James Harris, James Christie, Samuel T. Lowden, William Morrow, James Morrow, senior, Ephraim Kibby, George S. Harris, William Piles, Richard Cast, William Hadley, George Yeazle, James Galloway, junior, William Smally, Thomas Embly, Joseph Wysong, James Abbot, John Hadley, senior, Jane Buxton, Jonathan Tribby; as to the others, not found.

JOHN TARLTON,
For William Doherty, Marshal.

And afterwards, to wit, at the rules last aforesaid, held as aforesaid, came the complainant, by his solicitor aforesaid, and entered a rule on the said defendant, Freeman Smally, Benjamin Smally, Thomas Austin, William McDaniel, James Harris, James Christie, Samuel T. Lowden, William Morrow, James Morrow, senior, Ephraim Kibby, George S. Harris, William Piles, Richard Cast, William Hadley, George Yeazle, James Galloway, junior, William Smally, Thomas Embly, Joseph Wysong, James Abbot, John Hadley, senior, Jane Buxton, Jonathan Tribby, to answer the complainant to said bill of complaint within ninety days, or decree pro confesso; and thereupon this cause was continued.

And afterwards, to wit, at rules held as aforesaid, in the months of March, April, May, and June, in the year last aforesaid, this cause was continued.

And afterwards, to wit, at rules held as aforesaid, in the month of July, and year last aforesaid, came the defendants, Thomas Austin, James Harris, James Christie, and William McDaniel, by James A. Paxton, Esquire, their counsel, and filed their answers the complainant's said bill of complaint, which is in the words and figures following, to wit:

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The answer of Thomas Austin, James Harris, James Christie, and William McDaniel, to a bill in chancery, filed by James McDonald in the seventh circuit court of the United States, and district of Ohio. These respondents now and at all times saving and reserving to themselves all manner of exception to the many errors and misstatements contained in said bill, for answer to so much as they are advised it is material they should answer, they, answering, say, that it may be true, that David Anderson, on the 24th day of August, 1787, made the entry set forth in the bill, but of this fact they have no personal knowledge; they therefore require the production of an attested copy of said entry from the proper office. These respondents do deny that the said entry in the name of Anderson was a good and valid entry, that it was made with such certainty and precision that subsequent locators could locate the adjacent residuum with safety; on the contrary, they charge that said entry was vague, uncertain, and invalid, and the object called for by the same were not notorious, and particularly that the stream called Todd's fork in the entry of Anderson did not possess notoriety by that name, at or before the date of said entry. These respondents have no knowledge of the entry of Augustine Slaughter, further than the records of the county furnish the same, neither have they any personal knowledge of the other various entries referred to by the complainant, and made exhibits in the bill for the alleged purposes of proving the notoriety of certain watercourses called for in the said entries; but if those entries are to have any influence upon their case, they require full proof of their existence at their alleged dates, and that they contain on their face the several calls as charged in the bill. These respondents do not know at what time the East fork of Miami, O'Bannan's creek, Massie's creek, or Cæsar's creek, took their names, became notorious, or after whom they were called; neither can they, by any means, discover that they are questions in any manner involved in this controversy; but, if the court should be of the opinion that they may, by possibility, have some bearing on the interest of these defendants, they require full proof of the fact charged in relation to said streams. As to the notoriety of Todd's fork, as here reiterated by the complainant, they refer to the former part of their answer, where it is expressly denied, which denial they here again repeat. These respondents, although they have no personal knowledge of the fact, admit, that David Anderson assigned to G. Caldwell 1000 acres of the warrants included in the entry, now in fact claimed by the complainant, and that said Caldwell, or said Anderson, withdrew one thousand acres of said entry, but whether the withdrawal was made by Anderson of a part of his interest, or by said Caldwell, they do not know; they therefore require full proof of the allegation contained in the bill, that said Caldwell made the withdrawal without the consent of Anderson, or that it was in fact made by Caldwell, and not by Anderson. These respondents deny that the balance of said entry, after the withdrawal, was left precise and certain, and charge that said withdrawal, as appears by the marginal note of withdrawal, was general, and not from any specified part of said entry, and, as they are advised, was an absolute destruction of the pretended validity of said entry. These respondents have no personal knowledge of the alleged assignment of the entry made in the name of Anderson, by which McArthur and Lytle are claimed to have become the proprietors, or that McArthur and Lytle employed a surveyor to execute a survey on said entry; but this they do know, that so much of the general charge against the defendants, by which they

are alleged to have driven off the surveyor by force and violence, as is applicable to these respondents, is not true. The defendants, further answering, say, that it is not true, as charged in the bill, that the survey made on the balance of the entry of David Anderson "*was in all*" *respects according to law, and the calls of* "*the location;*" on the contrary, they charge said survey was illegal and void, and not on land appropriated by their entry. It is admitted that a patent issued to McArthur and Lytle at the time, and for the number of acres charged in the bill; but these defendants do not know, neither do they admit, that the interest of McArthur in said entry and patent was greater than that of Lytle, or otherwise than appears by the patent. These respondents admit that Duncan McArthur made a conveyance of all his interest under the entry and patent aforesaid, to the complainant, by the deed referred to and set out in the bill; but they are advised and believe, that no such consideration as that stated in the deed was ever paid by the complainant to said McArthur, and that, in fact, said deed was voluntary, without consideration, and made with the sole purpose and view of giving jurisdiction to the circuit court; and that said Duncan McArthur is now in fact the party interested, and the prosecutor of this suit against these respondents; they therefore charge, that said deed is void, and that this court cannot take jurisdiction of the cause. It is true that Stephen T. Mason made the entries referred to in the bill, but whether those entries are good and valid entries, or vague and uncertain, these respondents are unqualified to judge, and that being a question of law, they refer it to the court; it is also true that patents issued on said entries elder in date than the patent under which the complainant pretends to hold title. These respondents deny that there was any fraud in the execution of the survey on the entries in the name of S. T. Mason, and charge that said surveys were made according to law, and in conformity to said entries, as they are advised and believe, and the patents issued to said Mason vested him with the legal title free and clear from any equity of the complainant; neither was the same held by said Mason, or by these respondents, in trust for said complainant, but in their own absolute and unconditional rights, disencumbered by any trust, and free from the pretended equity now set up by the complainant. These respondents, further answering, say, that the defendants, Thomas Austin and James Harris, claim title under the patent in the name of S. T. Mason, by virtue of the article of agreement bearing date the 9th day of November, 1809, herewith filed, and made part of this their answer; by which it appears they purchased the land in controversy from Armistead Thompson Mason, attorney in fact for John Thompson Mason, executor and trustee of Stephen Thompson Mason, deceased. The defendant, James Christie, holds and claims seventy-three acres under the patent of said S. T. Mason, as follows, to wit: After the purchase of the defendants, Austin and Harris aforesaid, to wit, on the 18th day of July, 1810, the said Austin and Harris, by their agreement of the date last aforesaid, (which is herewith filed, and made part of this answer,) sold to William McDaniel one-third part of said 1000 acres, and the said William McDaniel, by his assignment on the said last mentioned article of agreement, transferred to the wife of your respondent, Anna Christie, seventy-three acres of the land in controversy, which assignment is also herewith filed, referred to, and made part of this answer. Your respondent, William McDaniel, who does not unite with his co-defendants in any of the foregoing part of this answer, for answer to said bill says, he disclaims all interest in the land in controversy, he having, previous to the institution of this

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suit, disposed of his entire interest therein to his two daughters, Eleanor Ann Austin and Anna Christie, as will fully appear by referring to the assignment filed as a part of the answer of his co-defendants. James Christie, your defendant, McDaniel, therefore, hereby disclaiming any right, title, or interest whatsoever in the land in controversy, prays to be hence dismissed with his cost herein unjustly expended. Your respondents, Austin, Harris, and Christie, further answering, say, that at the time they made their purchase of the survey of 1000 acres on No. 1507, they had full notice that McArthur and Lytle set up a pretended equity under some adverse claim, under some original and adverse entry to a part of the land included in the patent of S. T. Mason, No. 1507, which was the only notice they ever had, and they deny all other notice charged in the bill. These respondents deny all fraud, combination, and confederacy with which they stand charged in the bill, without that that there is any other matter or thing in the bill material or necessary for these defendants to make answer to, and not herein or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true. Your respondents, having fully answered, pray to be hence dismissed, with the full benefit of their elder legal title, fairly and honestly acquired, together with a decree for their cost herein unjustly expended. May it please your honors, &c.

THOMAS AUSTIN.
JAMES HARRIS.
JAMES CHRISTIE.
WILLIAM McDANIEL.

J. A. PAXTON, *attorney for defendants.*

THE STATE OF OHIO, *Clinton county, ss.*

Personally came before the subscriber, one of the associate judges for the county aforesaid, the within named Thomas Austin, James Harris, James Christie, and William McDaniel, and were severally sworn that the facts stated by each of them, in the above answer, as being within their knowledge, is true, and those they stated from information, they believe to be true.

Sworn and subscribed before me, this 10th day of May, A. D. 1824.

AARON SEWELL, *A. Judge.*

And at the same time, to wit, at rules held as aforesaid, in the month of July, and the year last aforesaid, came the defendants, Richard Cast, William Ruble, William Pyle, William Hadley, George S. Harris, James Morrow, Ephraim Kibby, Jonathan Tibby, Samuel T. Lowdon, and John H. Galligher, by James A. Paxton, Esquire, their counsel, and filed in the clerk's office of said court their answer to the complainant's bill of complaint, which is in the words and figures following, to wit:

The answer of Richard Cast, William Ruble, William Pyle, William Hadley, George S. Harris, James Morrow, Ephraim Kibby, Jonathan Kibby, Samuel S. Lowdon, and John H. Galligher, a bill filed against them and others, in the 7th circuit of the United States, district of Ohio, now and at all times saving and reserving to these respondents all manner of exception to the many errors and misstatements contained in said bill, for answer to so much as they are advised it is material they should answer, they, answering, say, that it may be true that David Anderson, on the 24th day of August, 1787, made the entry set forth in the bill, but of this fact they

have no personal knowledge; they therefore require the production of an attested copy of said entry from the proper office. These respondents do deny that the said entry, in the name of Anderson, was a good and valid entry, that it was made with such certainty and precision that subsequent locators could locate the adjacent residuum with safety; on the contrary, they charge that said entry was vague, uncertain, and invalid, and the objects called for by the same were not notorious; and particularly that the stream called Todd's fork in the entry of Anderson did not possess notoriety by that name, at or before the date of said entry. These respondents have no knowledge of the entry of Augustine Slaughter, further than the records of the country furnish the same; neither have they any personal knowledge of the other various entries referred to by the complainant, and made exhibits in the bill, for the alleged purpose of proving the notoriety of certain watercourses called for in said entries; but, if those entries are to have any influence upon their case, they require full proof of their existence at their alleged dates, and that they contained on their face several calls as charged in the bill. These respondents do not know at what time the East fork of Miami, Obannan's creek, Massie's creek, or Cæsar's creek took their names, became notorious, or after whom they were called; neither can they, by any means, discover that they are questions in any manner involved in this controversy; but if the court should be of opinion that they may, by possibility, have some bearing on the interests of these defendants, they require full proof of the facts charged in relation to said streams; as to the notoriety of Todd's fork, as here reiterated by the complainants, they refer to the former part of this answer, where it is expressly denied, which denial they here again repeat. These respondents, although they have no personal knowledge of the fact, admit that Anderson assigned to G. Caldwell one thousand acres of the warrants included in the entry, now in part claimed by the complainant, and that said Caldwell, or said Anderson, withdrew one thousand acres of said entry, but whether the said withdrawal was made by Anderson of a part of his interest, or by said Caldwell, they do not know; they therefore require full proof of the allegation contained in the bill, that said Caldwell made the withdrawal without the consent of Anderson, or that it was in fact made by Caldwell, and not by Anderson. These respondents deny that the balance of said entry, after the withdrawal, was left precise and certain, and charge that said withdrawal, as appears by the marginal note of withdrawal, was general, and not from any specified part of said entry, and, as they are advised, was an absolute destruction of the pretended validity of said entry. These respondents have no personal knowledge of the alleged assignments of the entry made in the name of Anderson, by which McArthur and Lytle are claimed to have become the proprietors, or that McArthur and Lytle employed a surveyor to execute a survey on said entry; but this they do know, that so much of the general charge against the defendants, by which they are alleged to have driven off the surveyor by force and violence, as is applicable to these respondents, is not true. These defendants, further answering, say, it is not true, as charged in the bill, that the survey made on the balance of the entry of David Anderson, *was in all respects according to law, and the calls of the location;* on the contrary, they charge said survey was illegal and void, and not on land appropriated by their entry. It is admitted that a patent issued to McArthur and Lytle at the time, and for the number of acres charged in the bill; but these defendants do not

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know, neither do they admit, that the interest of McArthur in said entry and patent was greater than that of Lytle, or otherwise than appears by the patent. These respondents admit that Duncan McArthur made a conveyance of all his interest, under the entry and patent aforesaid, to the complainant by the deed referred to, and set out in the bill; but they are advised and believe that no such consideration as that stated in the deed was ever paid by the complainant to said McArthur, and that in fact said deed was voluntary, without consideration, and made with the sole purpose and view of giving jurisdiction to the circuit court, and that said Duncan McArthur is now in fact the party interested, and the prosecutor of this suit against these respondents; they therefore charge that said deed is void, and that this court cannot take jurisdiction of the cause. It is true William Boyce made the entry charged in the bill, which entry these respondents are advised and believe was a good and valid entry, the survey made thereon in conformity to law, and in every respect strictly legal, and a patent issued to said William Boyce elder in date than the patent under which the complainant pretends to claim the land in controversy. These respondents deny that there was any fraud in the execution of the surveys in the name of Boyce, and charge that said surveys were made according to law, and in conformity to the entries on which they were made, as they are advised and believe, and the patents which afterwards issued to said Boyce invests him with the legal title, free and clear from any equity of the complainant; neither was the same held by said Boyce, or by these respondents claiming under him, in trust for said complainant, but in their own absolute and unconditional rights, disencumbered by any trust, and free from the pretended equity now set up by the complainant. These respondents, further answering, say, that on the 9th day of December, 1811, William Boyce, since , did execute his last will and testament, by which he appointed his wife, Elizabeth, his sons, John William, and his son-in-law, Thomas Winn, his executrix and executors, and the said Elizabeth and John took upon themselves the burthen of the execution of said last will and testament of William Boyce, deceased; and said Elizabeth, to wit, on the day of intermarried with a certain Gerard McKenny, who, as executors and executrix of the said William, deceased, together with said John, on the 23d day of March, 1816, by their deed of conveyance, transferred to Richard Cast 300 acres of said land, patented in the name of said William, deceased, all which now will fully appear, reference being had to an attested copy of the will and the deed herewith filed, and made part of this answer; and the said Cast, thus possessed of the legal title to said 300 acres, on the 20th day of May, 1816, by his deed of conveyance, transferred to the defendant, William Pyle, thirty-three acres one rood and twenty-seven and a half poles, part of the aforesaid 300 acres, as will fully appear by reference to the deed herewith filed, and made part of this answer. These respondents, further answering, show to your honors, that, on the 29th day of March, 1816, the said executors and executrix of William Boyce, deceased, by their deed, bearing the date last aforesaid, and herewith filed, conveyed to the defendant, William Hadley, three hundred and seventy-eight acres, part of two patents granted as aforesaid to said William Boyce, deceased, as will appear by referring to the deed herewith filed, and made part of this answer. Your respondent, William Hadley, retains acres, part of said 378, having conveyed the balance thereof to his co-defendants. Your respondent, William Ruble, holds part of a front lot in the town of Clarksville, No.

2 and 4, and derives his title to same through his co-defendant, William Hadley. Your respondent, James Morrow, is seized and possessed of lots No. 44, 43, 38, 37, and 36, in said town of Clarksville, and derives title in the same manner with his defendant, Ruble. Your respondent, Ephraim Kibby, is seized and possessed of about one hundred acres of land, with the improvements thereon, one and a half lot in the town of Clarksville. Your respondent, John Hadley, junior, holds no title to any part of the land in controversy, but is in possession of a part of the land conveyed by Boyce's executors and executrix, by the deed heretofore made part of this answer to his father, William Hadley. Your respondent, Jonathan Tibby, holds the following lots in the town of Clarksville, to wit, No. , and derives his title under William Hadley. Your respondent, Samuel T. Lowdon, holds the following lots, to wit, No. , and derives his title also under the said William Hadley. Your respondent, George S. Harris, holds three and a half acres adjoining the town of Clarksville, and also derives title under William Hadley. These respondents herewith file, as a part of this answer, the two patents of 1000 acres each to William Boyce, under which they derive title to the land in controversy. These respondents, having fully answered, deny all fraud, combination, and confederacy with which they stand charged in the bill, without that that there is any other matter or thing in the bill material or necessary for the respondents to make answer to, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true. Your respondents, having fully answered, pray to be hence dismissed with the full benefit of their elder legal title and possession, together with their cost herein unjustly expended. May it please your honor.

JAMES MORROW.
RICHARD CAST.
WILLIAM RUBLE.
WILLIAM PYLE.
WILLIAM HADLEY.
GEORGE S. HARRIS.
JOHN HADLEY, JUNIOR.
EPHRAIM KIBBY.
SAMUEL T. LOWDEN.

J. A. PAXTON, *attorney for def'ts.*

THE STATE OF OHIO, *Clinton county, ss.*

Personally came before me, one of the associate judges for the county aforesaid, the above named James Morrow, William Ruble, Richard Cast, William Pyle, William Hadley, George S. Harris, John Hadley, jun., Ephraim Kibby, and Samuel T. Lowden, were severally within acknowledged, sworn or affirmed, that the facts stated by them in the above answer are true, and those from information they believe to be true.

Sworn or affirmed, and subscribed, this 10th day of May, 1824.

AARON SEWELL, *A. Judge.*

And at the same time, to wit, at rules held as aforesaid, in the month of July aforesaid, and year last aforesaid, came the defendant, James Galloway, junior, and filed in the clerk's office of said court his answer to the complainant's said bill of complaint, which is in the words and figures following, to wit:

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To the honorable the judges of the circuit court of the United States for the district of Ohio, in chancery sitting:

The separate answer of James Galloway, junior, to the bill of complaint of James McDonald, exhibited against Freeman Smally and others in this court. The respondent saving and reserving to himself all benefit of exceptions to the many errors and uncertainties in said bill contained, for answer thereto, or to so much thereof as he is advised is material to answer unto, he answers and says, that he owns a survey of one thousand acres of land, in the State of Ohio, in the county of Clinton, on the waters of Todd's fork, entered and surveyed for Archibald Campbell, No. 2249, and patented to Richard Campbell the second day of March, one thousand seven hundred and ninety nine. The said Richard Campbell conveyed the same to one John Baker on the eighteenth day of February, one thousand eight hundred. John Baker aforesaid is long since deceased, and by his last will and testament devised the said land to his son, John Baker, and to his daughters, Miriam and Elizabeth Baker, in equal proportions; and this respondent purchased of the said John and Miriam, and of the heirs of Elizabeth, and of their assigns, under whom he claims the said survey, as will more fully appear by reference to the several deeds of conveyance hereunto annexed, which he prays may be taken as part of his answer; and to the last will and testament of the said John Baker, deceased, which is also filed herewith. This respondent admits that the above mentioned tract of one thousand acres interferes with the land claimed by the complainant to the amount of near seven hundred acres, as he is informed and believes; but denies that the entry of David Anderson, under which the complainant has derived title, was at the time of making said location so special that a subsequent locator could with safety enter or locate the adjacent residuum; he denies the notoriety of Todd's fork, and alleges that it was not known by those best acquainted with the country, or who lived in the nearest settlement to the said stream, by the name of Todd's fork for several years after the date of the location of David Anderson aforesaid, to wit, in the year one thousand seven hundred and ninety-two. This respondent, further answering, saith, that the survey of David Anderson aforesaid is improperly and illegally made, and contrary to the laws of Virginia in such cases made and provided; as it is not in every part one-third of its length in breadth, nor is the average breadth of said survey one-third of its length, and it is not bounded by hills or mountains, or lands unfit for cultivation, nor limited in its boundaries by prior or other surveys. This respondent, in further answering, charges that the conveyance from Duncan McArthur to the complainant was without consideration, and intended, as this respondent believes, for the sole purpose of giving jurisdiction to the circuit court, and that the beneficial interest in the land in controversy is still held by the said Duncan McArthur, a citizen of Ohio. This defendant denies all manner of fraud in obtaining his title, and all combination and confederation to defraud said complainant; and having answered the complainant's bill, prays to be dismissed with his costs unreasonably herein expended.

JAMES GALLOWAY, JUN.

STATE OF OHIO, *Green county, ss.*

Personally came before me, George Townsley, a justice of the peace in and for the county and State aforesaid, the above named James Galloway,

junior, who being duly sworn, deposeth and saith, that the several statements of facts set forth in the preceding answer in chancery, so far as stated from his own knowledge, are true, and those facts stated from the information of others he believes to be true.

Sworn and subscribed before me, this 19th day of June, 1824.

GEORGE TOWNSLEY, *Justice of the Peace.*

THE STATE OF OHIO, *Green county, ss.*

I, Josiah Grover, clerk of the court of common pleas of the county aforesaid, do hereby certify that George Townsley, Esq., before whom the within or foregoing answer of James Galloway, junior, appears to have been sworn to and subscribed, and who has certified the same, was at the time of so doing, and still is an acting justice of the peace within and for the county aforesaid, duly commissioned and qualified as such, and to whose official acts as such full faith and credit is due, and of right ought to be given, as well in courts of record as thereout.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the court aforesaid, at Xenia, the 19th day of June, 1826.

JOSIAH GROVER, *Clerk.* [L. S.]

And at rules held as aforesaid, to wit, in the month of July, and year last aforesaid, came the defendants, Thomas Austin, James Harris, James Christie, William McDaniel, James Galloway, junior, Richard Cast, William Ruble, William Pyle, William Hadley, George S. Harris, James Morrow, Ephraim Kibby, Jonathan Tibby, Samuel T. Lowden, and John H. Gallegher, by James A. Paxton, Esquire, their attorney, and filed herein the following interrogatories, to wit:

SEVENTH CIRCUIT COURT OF THE UNITED STATES, *District of Ohio, sct.*

Thomas Austin, James Harris, James Christie, William McDaniel, James Galloway, junior, Richard Cast, William Ruble, William Pyle, William Hadley, George S. Harris, James Morrow, Ephraim Kibby, Jonathan Tibby, Samuel T. Lowden, and John H. Gallegher,
ads.
James McDonald.
} *In chancery.*

The aforesaid defendants, having filed their answers to the bill of the complainant, James McDonald, who, in his said bill, represents himself as a citizen and resident of the State of Alabama, exhibit to said complainant the following interrogatories, and by virtue of the act of Assembly of the State of Ohio, in that case made and provided, require him to answer the same on oath or affirmation, that his said answers may be used as evidence on the trial of the above cause.

1st. What was the actual consideration paid by you to Duncan McArthur for his conveyance to you of the land now in controversy?

2d. Are you the real beneficial holder of the title to the land in controversy, or are you prosecuting this suit for the benefit of some resident of the State of Ohio.

3d. Was not the deed set forth in your bill at the time it was made executed to you for the purpose of giving jurisdiction to the circuit court of the United States for the district of Ohio?

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4th. In what manner was your negotiation for the purchase of the land in controversy conducted? If by letter, what are the contents of said letters? If in a personal interview, at what time and place was it held?

5th. Are you in fact the bona fide prosecutor of this suit, and were such at its commencement, or is the same prosecuted by some citizen and resident of this State for his own benefit, and your name used without your having any direct interest in the event of the suit?

6th. At the time the deed aforesaid from McArthur to you was executed, was there any agreement between you, either verbal or written, in relation to the land conveyed? If written, what are its contents? if verbal, what was its purport?

JAMES A. PAXTON, *attorney for defendants.*

And thereupon this cause was continued. And afterwards, to wit, at the July term, in the year last aforesaid, on motion of complainant's counsel, leave is granted him to withdraw exhibits accompanying the bill, marked B and C, leaving copies thereof.

And at the term aforesaid, to wit, at the July term of said court, in the year last aforesaid, came the defendant, William Smally, by Thomas Corwin, Esquire, his attorney, and filed his answer to the complainant's said bill of complaint, which is in the words and figures following, to wit:

The several answer of William Smally, one of the defendants to the petition of Jamas McDonald, exhibited against William Smally and others, in the seventh circuit court of the United States, district of Ohio, in chancery sitting. This respondent, saving and reserving to himself now and at all times hereafter all and manner of benefit of advantage of exception to the many untruths, errors, and insufficiencies in the complainant's bill contained, for answer thereunto, or to so much thereof as he is advised is material for him to make answer unto, he answereth and saith, that he admits that David Anderson made the entry at the time and under the circumstances set forth in the bill of complaint; that the said entry was special and precise, and legally appropriated the land contained within its boundaries, that Todd's fork was well known by that name at the date of the aforesaid entry; this defendant also admits that the same was patented to the said Duncan McArthur and William Lytle, and that the survey was made at the time specified in the bill of complaint; this defendant also admits the validity of the entry of Augustine Slaughter, as originally made. This defendant expects and believes that the complainant hath correctly set forth the several entries and surveys which he purports to describe in the bill of complaint on this subject; the defendant derives his information from report and from the bill. This defendant, in further answering, saith, that he denies, and does not believe, that the complainant has correctly stated the contract made between Lytle and McArthur; this defendant is informed and does verily believe *was* that it was expressly agreed by and between McArthur and Lytle, before and at the time of the purchase and transfer of the said entry No. 1529, of the agent of said Bradford, that Lytle was to have 800 acres, to be taken off of said entry in a parallelogram off of the west end to cover lands sold and land promised to be sold and conveyed to this respondent, and the residue of said tract and entry to belong to Duncan McArthur. This respondent further shows to your honors, that there is a suit in chancery in the court of common pleas for Clinton county, Ohio, in which the said Dun-

can McArthur is complainant, and Lytle defendant, for the partition between them of said entry No. 1529. This respondent, further answer saith, that he claims title to the two hundred and thirty-seven acres and upwards of land, situate in the of said survey No. 1529, by virtue of a deed in fee simple from William Lytle, dated August, A. D. 1821; this respondent immediately thereafter entered upon and took possession of the same, and has continued in the unmolested enjoyment thereof until the present time; this respondent has improved the same by clearing 180 acres, by building a brick dwelling-house and kitchen, erecting a grist-mill and saw-mill, planting two orchards. This respondent believes that the said last mentioned tract is included in the entry described in the bill as being made in the name of Richard Stark, and patented to William Lytle. This respondent further shows to your honors, that at the time when he made the said last mentioned purchase, the said Lytle informed him, that, if he would make the said purchase as aforesaid, he, Lytle, would sell to this respondent as much land adjoining thereto as he should want; that, pursuant to said agreement in the year 1806, the said Lytle informed this respondent that he had made the aforesaid contract with Bradford and McArthur, and that he was now ready to fulfil his agreement; this respondent immediately purchased of Lytle 391 acres of land; this respondent paid to Lytle the purchase money, $800, and received the title bond of Lytle for the execution of a deed; this respondent immediately entered into the possession, and has made thereon valuable improvements, to wit, 80 acres or 90 acres, a hewed log house, and other buildings; this respondent further saith that the last mentioned tract, he is informed, is included within the entry of Stephen Thompson Mason, and that he believes the said entry of Mason is void. This respondent, in further answering, saith, that the above described tract of land, as having been purchased, improved, and enjoyed by this respondent, and situate within the said 800 acres, to be laid off in a parallelogram off of the west end of said entry No. 1529. This respondent has no knowledge, except from the bill of complaint, of the sale and conveyance by Duncan McArthur to the complainant, without that that there is any other matter or thing in the complainant's bill contained, and not herein and hereby sufficiently answered unto, confessed and avoided, traversed or denied, is true; all of which matters and things this respondent is ready to aver and prove, as this honorable court shall award. This respondent prays hence to be dismissed with his cost, &c.

his
WILLIAM × SMALLY.
mark.

THOMAS CORWIN, *attorney for defendant.*

STATE OF OHIO, *Clinton county, ss.*

Personally appeared before me, Daniel Radcliff, a justice of the peace for the county of Clinton aforesaid, William Smally, who, being duly sworn according to law, deposeth and saith, that the foregoing answer in chancery, so far as the statements are made of his own information, are true, so far as stated from the information of others, he believes them to be true.

Sworn to and subscribed before me, this 8th day of June, A. D. 1824.

his
WILLIAM + SMALLY.
mark.

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Sworn to and subscribed to before me, this day and year above written.
DANIEL RADCLIFF, *J. P.* [L. S.]

THE STATE OF OHIO, *Clinton county, ss.*

I, Josiah Morris, clerk of the court of common pleas for the county aforesaid, do hereby certify that Daniel Radcliff, Esquire, before whom the aforegoing answer in chancery of William Smally was sworn to and subscribed, and whose name appears subscribed to the above certificate thereof, then was and now is one of our acting justices of the peace within and for the county aforesaid, duly commissioned and qualified, and to all his official acts as such due faith and credit are and ought to be given, as well in courts of justice as elsewhere.

In testimony whereof, I hereunto set my hand, and affix the seal of our said court, at Wilmington, the 8th day of June, A. D. one thousand eight hundred and twenty-four.

JOSIAH MORRIS, *Clerk.* [L. S.]

And afterwards, to wit, at rules held as aforesaid, in the month of August, and year last aforesaid, came the defendants aforesaid, by James A. Paxton, Esquire, their attorney, and entered a rule on the complainant to answer the interrogatories by them filed within ninety days, or decree pro confesso, &c.

And afterwards, to wit, at rules held as aforesaid, in the month of September, and year last aforesaid, this cause was continued.

And afterwards, to wit, on the twenty-first day of September, in the year last aforesaid, came the complainant, by Thomas Scott, Esquire, his attorney, and sued out of the clerk's office of said court an alias writ of subpœna in chancery against John Kerner, John S. Thomas, Jacob Longstreth, Isaac Wilson, senior, Andrew Christie, William Lytle, Daniel Briggs, James T. Baker, John Galloher, Isaac Morrow, John Kephart, Shadrick Ditto, John Morrow, John Hadley, junior, William Ruble, Thomas Constant, and Jacob Miller, which is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, *District of Ohio, sct.—To the marshal of said district, greeting:*

We again command you to summon John Kerner, John S. Thomas, Jacob Longstreth, Isaac Wilson, senior, Andrew Christie, William Lytle, Daniel Briggs, James T. Baker, John Galloher, Isaac Morrow, John Kephart, Shadrick Ditto, John Morrow, John Hadley, junior, William Ruble, Thomas Constant, and Jacob Miller, citizens of, and residents in, the State of Ohio, if they be found in your bailiwick, to appear before the judges of the circuit court of the United States for the 7th circuit, and district of Ohio aforesaid, at Columbus, on the first Monday in the month of January next, to answer James McDonald, a citizen and resident in the State of Alabama, of a certain bill in chancery by him against them exhibited, and this they shall in nowise omit, under the penalty of the law, and have then there this writ.

Witness the honorable John Marshall, Chief Justice of the United States, this 21st day of September, 1824, and in the 49th year of the independence of the United States of America.

Attest: HARVEY B. EVANS, *Clerk.* [L. S.]

And afterwards, to wit, at rules held as aforesaid, in the month of October, and year last aforesaid, this cause was continued.

And afterwards, to wit, at rules held as aforesaid, in the month of November, in the year last aforesaid, came the defendants aforesaid, by James A. Paxton, Esquire, their attorney, and the complainant still failing to answer the interrogatories by filed as aforesaid, although ruled so to do, it is considered that the same be taken for confessed, &c., to be required of, &c.

And afterwards, to wit, at the January term of said court, in the year of our Lord one thousand eight hundred and twenty-five, (the term to which the alias subpœna was made returnable,) came the marshal, and returned into court the writ aforesaid, to him in form aforesaid directed, with the following return endorsed thereon, to wit:

Served November 17th, 1824, by copy on defendants, John Morrow and John Hadley, junior; and William Lytle, resident, not found.

J. C. BRODRICK.

And afterwards, to wit, at the term aforesaid, to wit, the January term of said court, in the year of our Lord one thousand eight hundred and twenty-five, decree pro confesso set aside, leave granted complainant to amend his bill, and until first May granted him to answer the interrogatories filed by defendants.

And afterwards, to wit, at rules held as aforesaid, in the months of January, February, March, and April, in the year last aforesaid, this cause was continued.

And afterwards, to wit, at rules held as aforesaid, in the month of May, and year last aforesaid, came the complainant, and filed his answers to the interrogatories of the defendants, which are in the words and figures following, to wit:

STATE OF ALABAMA, *Franklin county.*

This day personally came before me James McDonald, of said county, and answers the annexed interrogatories, as follows:

To 1st interrogatory. The deponent answers that the consideration set forth in the deed of conveyance is eleven hundred dollars, which amount D. McArthur was at that time indebted to him.

To the 2d and 5th interrogatories. The deponent refers to a letter written to him by D. McArthur, dated 18th July, 1823, and hereto attached.

To the 3d interrogatory. The deponent answers yes, because he believes that court to be safer than any other in the State of Ohio.

To the 4th interrogatory. The deponent answers it was done by letter or letters, but he retained no copies of those he wrote.

To the 6th interrogatory. The deponent answers that at the time the deed was written there was no special agreement between him and McArthur, but perhaps proposition by letter. I give my bonds to a third party for a quit claim title to the said lands, on condition of them paying me eleven hundred dollars.

J. McDONALD.

THE STATE OF ALABAMA.

Before me, John Anderson, one of the justices of the peace for the county of Franklin, in the said State of Alabama, personally appeared James McDonald, who, being duly sworn, saith, that foregoing answers are correct and true, and also acknowledges the above to be his signature thereto.

Given under my hand and seal, at my office, in said county, the fourth day of April, in the year of Christ eighteen hundred and twenty-five, and forty-ninth of American independence.

JOHN ANDERSON, *J. P.* [SEAL.]

STATE OF ALABAMA, *Franklin county.*

I, Joseph Wofford, clerk of the county court for the county aforesaid, certify that John Anderson is an acting justice of the peace for said county, and that all due faith and credit should be given to his official act as such.

Given under my hand, and seal of office, at office, the 5th day of April, 1825.

JOS. WAFFORD, *Clerk.* [L. S.]

THE STATE OF ALABAMA, *Franklin county.*

I, Gregory D. Stone, judge of the county court of said county, do hereby certify that Joseph Wofford is the acting clerk of the county court of said county, and that full faith and credit should be to all his official acts as such, and that his certificate is in due form of law.

Given under my hand, this 5th day of April, 1825.

GREGORY D. STONE,
Judge of Franklin county court.

FRUIT HILL, *July* 18, 1823.

DEAR SIR: Your sister, McArthur, and Thomas J. left home on the 13th instant, for Bradford Springs, where they intend spending a few weeks. Mrs. Postmaster Creighton accompanied them. I hope that the mountain air and Bedford water will be of service to them. I wish that you would buy my claim in the name of David Anderson on Todd's fork of the Miami, you know its value; and I think if you were to buy it, and prosecute your title in the circuit court of the United States, that you would certainly gain the land, as there can be no doubt of Anderson's entry being a legal valid one, and would so be decided by any intelligent court. But since Judge McLean has resigned, there is no member of our Supreme Court who understands any thing of land causes. And the man who has the best title in the world to a tract of land in the Virginia military district, might as well toss up a copper, heads or tails, with his opponents for the title, as to go to law before our Supreme Court for his right. I yet owe you about eleven hundred dollars for the Beaver creek land, in the name of Sears; I am, indeed, as anxious as you can be to have this debt paid, which has been of too long standing. But it is out of my power to say when I can pay it, unless you will take horses or other lands for the amount now due. Although the Anderson's survey on Todd's fork must be worth, at least, five dollars per acre, exclusive of improvements, if the title was clear, yet, considering the uncertainty of decisions in our courts, which is very discouraging, I am willing to make you a quit claim deed for my interest in that survey, which is 1266⅔ acres, in payment of what I owe you, and thus settle and square off all accounts between us. Should you accept this offer, and not wish to prosecute the claim yourself, you can make something handsome, I have no doubt, by selling it to some of your neighbors, who, after gaining it, might wish to emigrate to this State. I have brought suit against General Lytle for a partition of this land, which was patented to him and myself as tenants in

common, his interest being 800 acres, and mine 1266⅔ acres, the survey in the name of D. Anderson, the whole of it being for 2066⅔ acres, the portion can be prosecuted as commenced, should you purchase. And I will give you, or any person to whom you may sell, any assistance in my power, should a suit be brought for the recovery of said land in the circuit court of the United States. With my best respects to yourself and family,

I remain, dear sir, yours with esteem,

DUNCAN McARTHUR.

Col. JAMES McDONALD.

And thereupon this cause was continued.

And afterwards, to wit, at the June term of said court, in the year last aforesaid, leave is granted complainant to amend his bill on payment of cost, and this suit is dismissed as to defendants, William Smally, William Lytle, Freeman Smally, Benjamin Smally, William Mickle, Job W. Sperry, Thomas Embly, James Morrow, Joseph Wysong, George Harris, and the heirs of John Kephart, and remanded to rules for further proceedings, amendment filed, which is in the words and figures following, to wit:

SEVENTH CIRCUIT COURT OF THE UNITED STATES, *District of Ohio, sct.*

JAMES McDONALD, *complainant*,
vs.
WILLIAM SMALLY and others, *defendants*. } *In chancery.*

And the said complainant, by leave of the court here for that purpose first had and obtained, amends his original bill of complaint, as follows, to wit: He charges, that at the time of the conveyance from the said Duncan McArthur to yourorator, as set forth in the original bill of complaint, a suit in chancery was pending in the court of common pleas of Clinton county, between the said Duncan McArthur, complainant, and the said William Lytle, defendant, in order to procure a partition of said land. Since which time, that is to say, at a court of common pleas, holden in and for the county of Clinton aforesaid, the said cause came on to be heard, and a final decree was pronounced, decreeing partition between the parties to a duly authenticated copy, of which, marked D, reference is hereby had for greater certainty as part hereof. And as to the defendants, William Smally, Freeman Smally, Benjamin Smally, William Mickle, Job W. Sperry, Thomas Embly, James Morrow, Joseph Wysong, George Harris, and the heirs of John Kephart, who fall within the bounds of the lands set apart on said partition in chancery to the said William Lytle, the complainant dismisses his bill of complaint.

THOMAS SCOTT, *Solicitor for complainant.*

Exhibit, marked D, in the words and figures following, to wit:

Pleas at Wilmington, before the honorable Joshua Collett, Esquire, president, and his associate judges of our court of common pleas for the county of Clinton, in the State of Ohio, on the first Monday of August, in the year of our Lord one thousand eight hundred and twenty-three.

DUNCAN McARTHUR,
vs.
WILLIAM LYTLE. } *In chancery.*

Be it remembered, that heretofore, to wit, on the second day of May, in the year of our Lord one thousand eight hundred and twenty-three, Duncan

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McArthur, by Thomas Scott, Esquire, his attorney, filed in our court of common pleas here his bill in chancery against William Lytle, in the words and figures following, to wit:

To the honorable the Judges of the court of common pleas of the county of Clinton, in chancery sitting, humbly complaining:

Your orator, Duncan McArthur, of the county of Ross, in the State of Ohio, showeth unto your honors, that on the twenty-fourth day of August, in the year of our Lord one thousand seven hundred and eighty-seven, one David Anderson made the following entry or location in the books of Richard C. Anderson, then the principal surveyor of the lands set apart by law for the satisfaction of military land warrants issued by the Commonwealth of Virginia to her officers and soldiers on the continental establishment, to wit, No. 1529, David Anderson, assignee, enters 3066⅔ acres of land, on sundry military warrants, viz. No. 885, for 200; No. 860, for 200; No. 1625, for 200; No. 1628, for 466⅔; No. 1910, for 200; No. 2589, for 100; No. 2811, for 100; No. 2831, for 200; No. 2927, for 200; No. 2953, for 200; No. 2931, for 100; No. 2983, for 100; No. 2984, for 100; No. 2985, for 100; No. 2986, for 100; No. 2992, for 100; No. 2997, for 100; No. 2998, for 100; No. 3005, for 100; and 3022, for 100 acres, on Todd's fork, a branch of Miami, beginning opposite the beginning corner of Augustine Slaughter's entry No. 1528, running up the creek, binding thereon, 1000 poles, when reduced to a straight line; thence off at right angles from the general course of the creek for quantity; to which entry, and those on which it depends, reference is had for greater certainty as parts hereof, which entry was certain and notorious in its calls, and appropriated the land embraced within its calls. Your orator further charges, that after the entry was thus made, the said Anderson assigned one thousand acres thereof to a certain G. Caldwell, to wit, warrants No. 835, 2589, 2811, 2983, 2984, 2992, 2997, 2998, 3005, who, without the consent of the said Anderson, withdrew the same, but leaving the residue of the entry certain and precise in its calls, and in all respects such as the law requires. Your orator further charges, that, on the fourth December, one thousand eight hundred and six, he, for a valuable consideration, procured from the assignee of said Anderson an assignment of twelve hundred sixty-six and two-thirds acres of the warrants, a part of the residue of the above entry, that is to say, No. 869, for 200 acres, granted to Robert Ironmonger; No. 1625, for 200 acres, granted to James Wood; No. 1628, for 466⅔ acres, granted to Stephen Smithers; No. 1910, for 200 acres, granted to Smith Kent; and No. 2831, for 200 acres, granted to John Depriest, assignee of Anderson Freeman; which warrants were assigned to David Anderson, from said Anderson to Henry Banks, from said Banks to David Bradford, and from said Bradford, by Abelard Bradford, his attorney, to this complainant, as from exhibit, marked B, containing a certificate of the Commissioner of the General Land Office, reference being thereto had, will more fully appear, and to which for greater certainty reference is prayed as part hereof. Your orator further charges, that, on the 9th day of December, one thousand eight hundred and six, eight hundred acres of the warrants included in the above entry, in the name of said Anderson, being the residue of said entry, were assigned by David Bradford, who was assignee Henry Banks, who was assignee of the said Anderson, to a certain William Lytle, of the town of Cincinnati, in

the county of Hamilton, in the State of Ohio, (and whom your orator prays may be made defendant to this bill,) as from the above certificate of the Commissioner of the General Land Office, referred to as exhibit B, reference being thereto had, will more at large appear, and to which your orator prays reference as part hereof. Your orator further charges, that, on the 4th day of October, one thousand eight hundred and seven, the 2066⅔ acres of said Anderson's entry, being the part of the original entry thereof which remained after the withdrawal aforesaid by Caldwell, was surveyed in strict conformity with its express calls, a plat and certificate was made out, and returned to the office of the principal surveyor, C. Anderson, and duly recorded. Your orator also charges, that, on the nineteenth day of May, in the year of our Lord one thousand eight hundred and seventeen, a patent was granted by the United States to your orator, and the said defendant, Lytle, for the two thousand sixty-six acres and two-thirds of an acre of the land included in the above named entry and survey, to hold as tenants in common, and not as joint tenants, and without setting forth the quantity to which your orator and the defendant were respectively entitled, pursuant to the above assignment to them respectively, as from said patent filed herewith, reference being thereto had, will appear. Your orator also charges, that he has frequently, in a friendly manner, applied to the said defendant for to make partition of said lands, agreeably to their respective interest therein, but that the said defendants, under various pretences, has hitherto refused so to do. He further charges, that the greater part of the above described lands and premises are situated in this county, but that he cannot compel partition at law, agreeably to the act in such cases made and provided, as the patent, under which he and the defendant claims, does not specify the quantity to which each are entitled in equity as aforesaid; he charges that the defendant, combining with others, refuses to do that which to justice appertains. In consideration whereof, and as your orator can only be relieved in the premises by the aid and decree of this honorable court, he prays that the defendant may, upon his corporal oath or solemn affirmation, true, direct, and perfect answer make to all the matters and things contained in this bill. He prays that commissioners be appointed to make partition between him and the defendant of the lands and premises in question, according to their respective rights derived as aforesaid, and that such final decree and order be made in the premises, as to your honors may seem meet. He also prays for the States' writ of subpœna to issue, directed to the defendant, &c., and for such other and further relief in the premises, as the nature and circumstances of this case may require; and, as in duty bound, he will ever pray, &c.

THOMAS SCOTT, *Solicitor for complainant.*

Certificates of the Commissioner of the General Land Office, marked B.

The following assignments are annexed to survey No. 1529, in the name of David Anderson, for 2066⅔ acres of land.

For value received, I do hereby assign unto Duncan McArthur the following Virginia military land warrants, which are now in Col. Richard C. Anderson's office, viz. No. 869, for 200 acres, granted to Robert Ironmonger; No. 1625, for 200 acres, granted to James Wood; No. 1628, for 466⅔ acres, granted to Stephen Smithers; No. 1910, for 200 acres, granted to Smith Kent; and No. 2831, for 200 acres, granted to John Depriest, assignee

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of Anderson Freeman, which warrants were assigned to David Anderson, from said Anderson to Henry Banks, and from said Banks to David Bradford.

ABELARD BRADFORD,
For David Bradford.

Test: COLLIN MCCALLUM, T. WORTHINGTON.
December 4, 1806.

For value received, I do hereby assign to William Lytle eight hundred acres of the warrants now in Col. Richard C. Anderson's office, which were assigned by David Anderson to Henry Banks, and by said Banks to David Bradford, which warrants now remain entered in the name of said David Anderson, on Todd's fork of Miami, known in the said office by No. 1529; and do hereby authorize the proper officers to grant a patent or patents to the said William Lytle for eight hundred acres accordingly.

Given under my hand and seal, this 9th December, 1806.

For David Bradford,
ABELARD BRADFORD, [SEAL.]
His attorney in fact.

Test: JNO. MACHIR, DUNCAN MCARTHUR.

I certify that the foregoing is truly copied from the original assignments remaining on file in the General Land Office of the United States.

In witness whereof, I have hereunto set my hand, at the city of Washington, this 6th of June, 1817.

JOSIAH MEIGS,
Commissioner of the General Land Office.

And thereupon was issued out of our court of common pleas here our writ of subpœna in chancery against the said defendant, in form following, to wit:

Subpœna in chancery.

THE STATE OF OHIO, *Clinton county, ss.—To the sheriff of Hamilton county, greeting:*

We command you that you summon William Lytle, if he may be found within your bailiwick, that he be and appear before the judges of the court of common pleas of the county of Clinton aforesaid, at the court house in Wilmington, on the first Monday of August next, to answer a petition in chancery, exhibited against him by Duncan McArthur, and this he shall in nowise omit, under the penalty of one thousand dollars, and have then there this writ.

Witness the honorable Joshua Collett, Esquire, president judge of our said court, at Wilmington, the third day of May, in the year of our Lord one thousand eight hundred and twenty-three.

JOSIAH MORRIS, *Clerk.* [L. S.]

On which day, to wit, the first Monday of August aforesaid, before the judges aforesaid of our court of common pleas here, at Wilmington, comes as well the said complainant, by his counsel aforesaid, as the said defendant, by Benjamin Collett and Thomas Corwin, Esquires, his counsel, and the

sheriff of Hamilton county, to wit, William Ruffin, Rsq., to whom the aforegoing writ of subpœna in chancery, in form aforesaid, was directed, makes return thereof to our court here, endorsed thus:

Sheriff's return.

Summoned by copy, 14th May, 1823; and the said defendant, by his counsel, files in our court of common pleas here his answer to the bill of the said complainant, in the words following, to wit:

Answer of defendant.

William Lytle reserving all and all manner of exceptions to the numerous errors, defect, and untruths contained in the petition or bill of Duncan McArthur, to which he makes answer, answers and says, that to so much of said bill or petition as he is advised is material or essential for him to answer, respondent admits the statement of said McArthur to be correct, as to entry by David Anderson of 3066⅔ acres of land, 24th August, 1787, and the withdrawal by G. Caldwell, as set forth in McArthur's bill. Respondent admits that Abelard Bradford did assign equal to 1266⅔ acres of the warrants which were a part of the entry No. 1529, to Duncan McArthur, and the remainder, 800 acres, to your respondent, so that including the withdrawal by G. Caldwell, it made the full quantity of 3066⅔ acres, as originally entered, No. 1529, in the name of David Anderson. Respondent admits the assignment to him of 800 acres, on the 9th day of December, 1806, but he expressly affirms that the bargain or purchase of said interest was made several days before the transfer was made to himself, and of the transfer which McArthur alleges as made by Abelard Bradford to McArthur. Respondent has no recollection as to the time when made. Respondent has not at this time any recollection of the alleged transfer from Anderson to Banks, and of Banks to Bradford, as set forth by McArthur. Respondent admits that on the fourth of October, 1807, a survey for 2066⅔ acres of said Anderson's entry was made as alleged by McArthur, and also a survey and a plat of which was forwarded to R. C. Anderson as alleged, and by him recorded. Respondent admits that a patent issued from the United States to himself and said McArthur for the said 2066⅔ acres of land, part of entry No. 1529 as aforesaid, without specifying any particular part as belonging to either Lytle or McArthur. Respondent admits, that himself and said McArthur have often conferred together upon the subject of a division of this land aforesaid, but he denies he has ever refused to divide; on the contrary, he affirms he has always been and is now ready and anxious to divide and settle with said McArthur, agreeable to their contract made before Bradford assigned to either himself or McArthur, but that it has always failed, not as is falsely alleged by respondent's refusal to comply with what was correct, but by reason of said McArthur setting up an unjust and unfounded claim contrary to contract, as respondent will now proceed to show. Respondent would show, and he so affirms the fact to be, that some time in November, 1806, he visited Chillicothe, the then seat of government, on various matters of business relative to himself and others, he is unable to state the day; but he, by reference to tax receipts, finds that he was in Chillicothe as early as 12th November, 1806, as on that day he paid taxes personally, as his receipts show, and he remained in Chillicothe or the vicinity until some time in December, 1806, in all a period of about four weeks. Prior to that time, respondent made a contract with William Smally for lands

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within the lower end of said entry or survey No. 1529, as now occupied by the said Smally, and conveyed the same in ignorance of said Anderson's entry, and the title thereof being in Bradford, as he afterwards discovered. Respondent, during his stay in Chillicothe, succeeded in closing a contract with Abelard Bradford for said entry, as it then stood unpatented. At the time respondent made the contract, said Bradford represented himself as fully competent to sell, and after closing observed the papers were in the hands of Duncan McArthur, and purposed calling upon him, to which respondent agreed. Upon stating to McArthur the bargain, McArthur accused respondent of taking a snap judgment upon him, as he designed or wished to purchase the land himself. Respondent replied, his object was to secure Smally; and if McArthur wished to purchase, if he would consent to receive the upper part, and allow respondent to retain the lower part of the entry, so as to secure Smally, respondent would give up to McArthur the upper part. To this McArthur agreed, and there being at that time only an entry, it was agreed Lytle should have 800 acres of the warrants assigned to him to cover so much of the lower end of the survey, and McArthur have 1266⅔ acres of the warrants assigned to him, to cover the remainder or upper part of the tract. Respondent has no recollection of the arrangement made between Bradford and McArthur, as to payment or assignment, but he alleges that such was the manner of the bargain between himself and Bradford; and then when he agreed to give up the larger share to McArthur, there were no assignments made, nor had McArthur any right, only under respondent as aforesaid. Respondent did not then regulate with Bradford for his share, but, being occupied with business of various kinds, let it rest for some days, when he finally regulated with Bradford, and received an assignment for the 800 acres; and this being all he expected, he paid no attention to see that his assignment was of same date as McArthur's, though he might, had it been material, or have been ever thought of, had the date the same. Respondent agreed at the time with McArthur to make a survey, and return it to the surveyor's office, in order to obtain a patent, on receipt of which each part was to release to the other the part which by the contract he was to have. Respondent would further show that he had, 19th July, 1796, entered 1000 acres in the name of Richard Starks, No. 2754, which covered a part of the Anderson entry No. 1529 aforesaid; but, on afterwards learning of the entry of Anderson, he was obliged to have recourse to a purchase from Bradford, to enable him to make a title to Smally. Respondent alleges he had at the time full confidence McArthur would honorably fulfil the bargain made, and, supposing no attempt to take advantage would be made, he trusted the matter in that shape; he has, however, to his regret, ever since the patent issued, been harassed by said McArthur, who, contrary to all equity and justice, is now setting up a claim to have a division, not according to the terms on which respondent consented to let him have a share of the tract, but by setting up a claim for a division throughout, whereby he can avail himself of Smally's industry and labor in improving that part of the lands which were expressly agreed should be respondent's, to accomplish which injustice, said McArthur is seizing on such trifling pretext as a little difference in the date of assignments, and the patent issuing in the name of both jointly, as grounds to support his unjust claim of division throughout. Respondent alleges, that, as the matter stood when the warrants and entry were assigned, no better arrangements could be made, there being there no patent or survey by which a deed or precise division could be made, there being only

an entry of 3066⅔ acres, from which 1000 had been withdrawn, and until a survey had been made for the balance of 2066⅔ acres, no division by metes and bounds could be made, and consequently he alleges all McArthur's pretensions founded upon the dates of the assignments, and the patent issuing in the joint names of both, are manifestly all in iquitous and unjust, and purposely seized upon at this time, but not thought of when the contract was made. Respondent expressly denies all fraud, or combination to defraud, without this, that there is any thing material or essential for respondent to answer, and not herein sufficiently traversed, denied, explained, or answered, is true, to the best of respondent's knowledge and belief, as he is ready to verify in such a manner as this honorable court may direct. Respondent therefore prays he may be hence dismissed with his cost in this behalf so unjustly sustained, he being now and always heretofore ready, and hereby agreeing to execute a quit claim to complainant, McArthur, for his share of the upper end of survey No. 1529, upon said McArthur's executing to respondent a quit claim for his share at the lower end of said survey, agreeable to their contract of 1806, when the purchase was made.

WILLIAM LYTLE.

STATE OF OHIO, *Hamilton county, ss.*

Before me, a justice of the peace within and for said county, personally came William Lytle, and being duly sworn, deposes and says, that the several facts and matters set forth in the foregoing answer, so far of his personal knowledge, are true, and so far as derived from information, he verily believes them to be true.

Sworn and subscribed before me, this 30th July, 1823.

E. HOTCHKISS, *Just. Peace.*

And thereupon the answer of the defendant being filed, and the replication being considered in, by consent, the court order, adjudge, and decree, that Nathan Linton, Robert Eachus, and Samuel Miller, proceed on the twenty-fifth day of September next to divide the land in the bill, named according to the claims and pretensions of both complainant and defendant, and make return thereof to the next term of this court.

Whereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by order of the court here thereon, is continued, until the second Monday of November aforesaid, before the judges aforesaid, of our court of common pleas here, at Wilmington, come the parties aforesaid, by their counsel; and Nathan Linton and Samuel Miller, two of the commissioners appointed to make partition, make report of their proceedings to our court here, in these words, to wit:

Pursuant to the within order, we, Nathan Linton and Samuel Miller, (Robert Eachus being sick,) met on the premises in controversy on the day therein appointed, and laid off 800 acres at the lower end of the survey, according to the claim and pretension of William Lytle, which, in our judgment, is of more than average value with the balance of the survey, though we thought not very considerable. We then divided the survey agreeable to the claim and pretensions of Duncan McArthur, in which division, according to the best of our judgments, we have given each of them their respected quantities in land of equal average value, all which divisions are represented in the plat herewith returned. October 1st, 1823.

NATHAN LINTON,
SAMUEL MILLER.

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THE STATE OF OHIO, *Clinton county, ss.*

Personally came before me, the subscriber, a justice of the peace within and for the county aforesaid, Nathan Linton, and affirmed, and Samuel Miller, who was sworn, to discharge the duties assigned them agreeable to the within order.

Given under my hand, this 27th day of September, 1823.

JAMES HARRIS, *J. P.*

[*For plat and filed notes, see original.*]

No. 79.—STATE OF OHIO, *Clinton county, ss.*

DUNCAN McARTHUR, *vs.* WILLIAM LYTLE. } *In chancery.*

Pursuant to an order of the court of common pleas of the county aforesaid, dated the 24th September, 1823, I hereby certify that I have divided survey No. 1529, first laying off to William Lytle 800 acres at the lower end, the red line on the plat points ante that division according to the claim and pretensions of said Lytle, and then as represented by the dotted lines, agreeable to the claims and pretensions of Duncan McArthur, the lots No. 1, 4, and 6, containing 1266⅔ acres for Duncan McArthur, and No. 2, 3, and 5, for William Lytle, containing 800 acres, the meanders of Todd's fork, beginning at the lower corner follows, N. 19 E. 18, N. 8 E. 28, N. 55 E. 63 poles, to two bur oaks and buckeye, N. 62 E. 65, N. 67 E. 41, N. 11 E. 30 poles, to two sugar trees and two lynns; thence N. 81 E. 2, East 20, S. 67 E. 50, S. 23 E. 25, S. 60 E. 28 poles, to a honey locust and sugar tree; thence S. 80 E. 62, N. 88 E. 48, crossing Sewell's run at 34 poles, N. 45 E. 18, N. 25 E. 27, N. 17 E. 30, N. 4 E. 26, N. 23 W. 28, N. 7 W. 24, N. 10 E. 20, N. 15 E. 64, N. 20 W. 13, to a stake, where the lower line of Stephen T. Mason's survey No. 1507 crosses the creek; thence N. 20 E. 29, N. 43 E. 66, crossing Cowan's creek at 32 poles, N. 39 E. 40, N. 79 E. 51, to a stake dividing corner of lots No. 5 and 6; thence N. 79 E. 3 poles, N. 33 E. 53, N. 80 E. 72, S. 76 E. 14, N. 73 E. 25, N. 24 E. 21, N. 20 W. 52, N. 30 E. 11 poles, to elm, mulberry, and hackberry, all the other courses and distances as set on the plat. October 3, 1823.

NATHAN LINTON, *S. C. C.*

THOMAS DAUGHERTY, CHARLES DAUGHERTY, } *C. C.*

Interlocutory decree.

And it being made appear to the satisfaction of the court here, that one of the commissioners appointed at the last term of this court, pursuant to the interlocutory decree of this court, was, by reason of sickness, unable to attend, the other commissioners appointed in said decree to make partition of the lands in the bill named, according to the pretensions of the parties, it is therefore further adjudged, ordered, and decreed, that the report made by the said two commissioners be withdrawn, and that said commissioners meet on the lands in the bill named, at the mill of William Smalley, on the first Monday in next month, and re-examine the land, and the partition returned by the said two commissioners to the present term, and continue from time to time until the said partition is completed, and that they report their pro-

ceedings to the next term of this court. Whereupon further process, &c., between, &c., by order, &c., is until the twelfth day of April next. On which day, to wit, the twelfth day of April aforesaid, before the judges aforesaid of our court of common pleas here, at Wilmington, come the parties aforesaid, by their counsel; and the said Nathan Linton, Robert Eachus, and Samuel Miller, commissioners appointed as aforesaid to re-examine the land, and the partition returned by the said two commissioners, make report of their proceedings to our court here, in the words and figures following, to wit:

Report of Commissioners.

STATE OF OHIO, *Clinton county, ss.*

DUNCAN MCARTHUR, *vs.* WILLIAM LYTLE. } *In chancery.*

Pursuant to an order of the court of common pleas for the county aforesaid, made at their November term, in the year 1823, the undersigned commissioners met at William Smalley's mill on the first Monday of December following, and proceeded to re-examine the division of survey No. 1529, made under a former order by two of said commissioners, and agreed on the division of said survey, wherein 800 acres is laid off at the lower end of the survey for William Lytle, agreeable to his claim and pretensions. The average value of said 800 acres, in our opinion, rather exceeds the average value of the whole survey; and then proceeded to the division of the whole survey, agreeable to the claims and pretensions of Duncan McArthur, wherein we have given each their respective portions of the survey in land of equal average value, as nearly in our judgment as we could; all which divisions are represented in the annexed plat. Given under our hands this 3d day of December, A. D. 1823.

NATHAN LINTON.
ROBERT EACHUS.
SAMUEL MILLER.

[*For plat, see original.*]

THE STATE OF OHIO, *Clinton county, ss.*

Personally came before me, the subscriber, a justice of the peace within and for the county aforesaid, Nathan Linton and Robert Eachus, who affirmed, and Samuel Miller, who was sworn, to discharge the duties assigned them agreeable to the within order. Given under my hand this first day of December, 1823.

JAMES HARRIS, *J. P.*

STATE OF OHIO, *Clinton county, ss.*

DUNCAN MCARTHUR, *vs.* WILLIAM LYTLE. } *In chancery.*

Pursuant to an order of the court of common pleas for the county aforesaid, of November term, 1823, I hereby certify, that, agreeable to the re-examination and conclusion of the commissioners therein appointed, the partition of

survey No. 1529 is represented in the above plat, wherein 800 acres was first laid off at the lower end for William Lytle, agreeable to said William Lytle's claim and pretensions. The red line on the above plat represents that division. The dotted lines represent the division made agreeable to the claim and pretensions of Duncan McArthur, the lots No. 1, 4, and 6, containing 1266⅔ acres for Duncan McArthur, and lots No. 2, 3, and 5, for William Lytle, containing 800 acres; the meanders of Todd's fork follow, beginning at the lower corner, a lynn and hackberry, four poles above a large sycamore marked D A; thence up the creek N. 19 E. 18 poles, N. E. 8 28, N. 55 E. 163 poles, to two burr oaks and buckeye; thence N. 62 E. 65, N. 67 E. 41, N. 81 E. 30 poles, to two sugar trees and two lynns; thence N. 81 E. 2, East 20, S. 67 E. 50, S. 23 E. 25, S. 60 E. 28 poles, to honey locust and sugar tree; thence S. 80 E. 62, N. 88 E. 48, crossing the mouth of Sewell's run at 34 poles, N. 45 E. 18, N. 25 E. 27, N. 17 E. 30, N. 4 E. 26, N. 23 W. 28, N. 7 W. 24, N. 10 E. 20, N. 15 E. 64, N. 20 W. 13 poles, to a stake, dividing corner of lots No. 4 and 5; (the lower line of Stephen T. Mason's survey No. 1507 crosses the creek at this place;) thence N. 20 E. 29, N. 43 E. 66, crossing the mouth of Cowan's creek at 32 poles, N. 39 E. 40, N. 79 E. 51 poles, to a stake, dividing corner of lots No. 5 and 6; thence N. 79 E. 3, N. 33 E. 53, N. 80 E. 72, N. 76 E. 14, N. 73 E. 25, N. 24 E. 21, N. 20 W. 52, N. 30 E. 11 poles, to elm, mulberry, and hackberry. All the other corners and distances are set on the plat. December 4, 1823.

NATHAN LINTON, *S. C. C.*

THOMAS DAUGHERTY, CHARLES DAUGHERTY, } *C. C.*

Whereupon, further process, &c., between, &c., by order, &c., is continued until the ninth day of August next, on which day, to wit, the ninth day of August aforesaid, that is to say, the ninth day of August, in the year of our Lord one thousand eight hundred and twenty-four, before the honorable Joshua Collet, Esquire, president, and Jesse Hughes, Aaron Sewell, and James Darkin, Esquires, his associates, judges of our said court of common pleas here, at Wilmington, come the parties aforesaid by their counsel, and the cause came on to hearing; and the said defendant, by his counsel, read in evidence, on the hearing of said cause, a deposition of Nicholas Links, in the words following, to wit:

Deposition of N. Links.

THE STATE OF OHIO, *Clermont county, ss.*

DUNCAN MCARTHUR, *vs.* WILLIAM LYTLE. } *In chancery.*

The deposition of Nicholas Links, of lawful age, taken before me, David Morris, a justice of the peace of Williamsburg township, of the county of Clermont aforesaid, on Saturday, the 20th day of December, 1823, between the hours of ten and four o'clock on said day, at the house of the said Nicholas Links, in Williamsburg, in said county, to be read in evidence on the trial of the above cause, depending in the court of common pleas, in Clinton county, the said Nicholas Links, being duly sworn according to law, de-

poseth and saith as follows: I was present in Chillicothe in December, in the year eighteen hundred and six, at the conversation which took place between Duncan McArthur and William Lytle respecting the purchase of a survey by Lytle of Abelard Bradford, attorney in fact for his father, David Bradford. McArthur observed to Lytle that he, Lytle, was about to take a snap judgment on him, McArthur, as he, McArthur, wished to purchase the survey himself, or words to that effect, as well as I can recollect. Lytle replied, that he would not have purchased the survey had it not been for the purpose of securing Smalley, and that he wanted 800 acres off the lower end for that purpose. In the same conversation it was agreed between Lytle and McArthur, that Lytle was to have 800 acres off the lower end, to secure Smalley, and that McArthur was to have the balance, as I understood them. I think Abelard Bradford and John Machir were both present at that time; and I have heard that Machir is since dead; and further saith not.

N. LINKS.

Sworn to and subscribed before me, 20th day of December, 1823.

DAVID MORRIS, *J. P.*

STATE OF OHIO, *Clermont county, ss.*

I, David C. Bryan, clerk of the court of common pleas within and for said county, do certify that David Morris, Esquire, whose name is signed to the above certificate of deposition of the therein named Nicholas Links, and before whom the same appears to have been made, now is, and was at the time of signing his name thereto, an acting justice of the peace in and for the said county, duly commissioned and sworn, and that full faith and credit is and ought to be given to all his official acts as such.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at New Richmond, this 20th day of December, A. D. 1823.

DAVID C. BRYAN, *Clerk.* [L. S.]

Decree.

Whereupon, the bill, answer, replication, exhibits, deposition, and return of commissioners being read, the parties, by their counsel, heard, and the court, having fully advised of and concerning the premises, are of opinion that the law and equity of the case is with the complainant, it is therefore adjudged, ordered, and decreed, by the court here, that the partition of the lands and premises in question, made by the commissioners, Nathan Linton, Robert Eachus, and Samuel Miller, heretofore appointed by the court for that purpose, by this court setting off to the complainant twelve hundred and sixty-six and two-thirds acres of the upper end of David Anderson's survey No. 1529, and setting off to the defendant eight hundred acres of the lower end of said Anderson's survey, be, and the same is hereby, confirmed. And it is hereby further adjudged, ordered, and decreed, that the defendant, Lytle, do, on or before the first day of October next, by a good and sufficient deed in the law, revise, release, and for ever quit claim to the complainant, of all his right, title, interest, and claim to the said one thousand two hundred and sixty-six and two-thirds acres, to hold the same in severalty to him, his heirs, and assigns, for ever, by the following metes and bounds, to wit: Beginning at a stake in the back line of David Anderson's said survey No. 1529, standing N. 52 E. 327¾ poles from the lower back corner of said survey, running thence N. 37¼ W. 360 poles, passing through

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Clarkesville, to two sugar trees and two lynns on the bank of the creek; thence up the creek, with the meanders thereof, and binding thereon, to an elm, mulberry, and hackberry, on the bank of the creek, and upper corner to Anderson's said entry; thence S. 37¼ E. 375 poles, crossing two branches, to a stake upper back corner to Anderson's said survey; thence with another line of said survey S. 52 W. 672¼ poles, crossing Cowan's creek and several branches, to the beginning; and in case default be made in executing the conveyance within the time limited by this decree, then this decree to operate as a conveyance. And it is hereby further ordered, adjudged, and decreed, that the complainant do, on or before the first day of October next, by a good and sufficient deed in the law, release, remise, and for ever quit claim, all his right, title, and interest, of, in, and to the said tract of eight hundred acres, to hold the same, in severalty, to him, his heirs and assigns, for ever, by the following metes and bounds: Beginning at a lynn and hackberry, four poles above a large sycamore marked D A, the lower corner on the creek to Anderson's said survey; thence S. 37¼ E. 375 poles, crossing the East fork of Todd's fork, to four white oaks, lower back corner to said survey; thence N. 32 E. 327¼ poles, to a stake in the said line; thence N. 37¼ W. 360 poles, passing through Clarkesville, to two sugar trees and two lynns on the bank of the creek; thence down the creek, with the meanders thereof, and binding thereon, to the place of beginning; and in case default be made in executing the last mentioned deed within the time limited by this decree, then this decree to operate as a conveyance. The court do further order and decree that the parties pay the cost of this suit, respectively, in the proportion of the land decreed to each.

Notice of appeal by complainant.

Afterwards, to wit, at the term of August aforesaid, before the judges aforesaid, the said complainant, by his attorney, comes, and enters on the records of our court here notice of appeal from the decree of our court here, in form aforesaid, rendered to the Supreme Court of the State of Ohio, next to be holden at Wilmington, within and for the county aforesaid. Costs taxed, $81 79½.

JOSHUA COLLETT.

THE STATE OF OHIO, *Clinton county, ss.*

I, Isaiah Morris, clerk of the court of common pleas aforesaid, do hereby certify that the aforegoing contains a true copy of the record and proceedings aforesaid, in the court of common pleas aforesaid, between the parties aforesaid, in the cause aforesaid.

In testimony whereof, I hereunto set my hand, and affix the seal of our said court, at Wilmington, the thirteenth day of September, in the year of Lord one thousand eight hundred and twenty-five.

ISAIAH MORRIS, *Clerk.* [L. S.]

And afterwards, to wit, at the January term of said court, in the year of Lord one thousand eight hundred and twenty six, it is ordered that the county surveyor of Clinton county do go upon the lands in controversy between the parties, on such day as either party may direct, the adverse party having legal notice, and then and there lay off the same as either party may direct, having regard to deeds and such other evidence of title as

shall be produced, report all matters of fact, specially return four plats and certificates thereof into the clerk's office of this court, at least thirty days before our next term. And the marshal of this district is hereby directed to attend, if required, and remove all force, should any be offered; and thereupon this cause was continued.

And afterwards, to wit, at rules held in the clerk's office of said court, in the months of January, February, March, April, May, and June, in the year last aforesaid, this cause was continued.

And afterwards, to wit, on the twenty fourth day of July, in the year last aforesaid, came the parties, by their counsel, and filed herein the following agreement, to wit:

UNITED STATES' SEVENTH CIRCUIT COURT, OHIO DISTRICT.

JAMES McDONALD, *complainant*,
vs.
JAMES GALLOWAY, Jr., and others, *defendants*. } *In chancery*.

The undersigned, the plaintiff, (by his attorney in fact, Duncan McArthur,) and defendants, in this case agree (for the purpose of saving to themselves the trouble and expense of executing a new survey) that the survey which was executed by the county surveyor of Clinton county, of Ohio, on the ninth day of December, 1820, of entry No. 1529, in the name of David Anderson, on Todd's fork, now on file in the clerk's office, in the county aforesaid, and which is the survey of the land in controversy in this suit, shall be offered in evidence on the trial of the above cause, now depending and undetermined in the United States' seventh circuit court for the district of Ohio; and that the same shall be taken and considered as binding on the parties as if the same were again made. The defendants also agree that in future, whenever the plaintiff, McDonald, shall proceed to take the deposition of any person where it shall be necessary to give notice to the defendants, that notice served upon James Harris and William Hadley, of Clinton county, and James Galloway, jr., of Green county, (three of the defendants in this cause,) shall be deemed and taken to be legal service of notice on each and every of us, defendants in the above cause.

James McDonald, Complainant,
By his attorney in fact,
DUNCAN McARTHUR.
THOMAS AUSTIN,
JAMES HARRIS,
SAMUEL T. LOWDEN,
Defendants.

Note.—It is further agreed between the parties, that in case the survey above referred to cannot be withdrawn from the clerk's office of Clinton aforesaid, that a certificate and sworn copy of said survey, from the county surveyor's office of said county, shall be taken and considered by the parties aforesaid as a legal survey, and be offered in evidence in the trial of the above case, in the manner and for the purpose above set forth. Clarksville, Clinton county, Sept. 5th, 1825. Defendants: George Yeazle, William Pyle, Ephraim Kibby, Richard Curt, William Hadley, John S. Wakell, Thoviton F. Tyson, John Hadley, jr., James Galloway, jr. Xenia, September 13th, 1825.

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Which said survey is in the words and figures following, to wit:

[*For plat, see original.*]

STATE OF OHIO, *Clinton county, ss.*

DUNCAN MCARTHUR, *complainant,*
vs.
WILLIAM LYTLE, JACOB BAYMILLER, JAMES BAXTON, JAMES GALLOWAY, jr., and others, *defendants.* } *In chancery.*

In pursuance of an order of the court of common pleas of the county aforesaid, dated the 20th September, 1820, I hereby certify that I have surveyed the land in question in the above case, first running and measuring from the upper side of the mouths of Todd's fork, beginning at the place pointed out by the deposition of James Miranda as the lower corner of John Payton Harrison's 4000 acres survey No. 1494, the trees being now washed away by the creek; thence run and measured various courses to the bank of the creek, opposite the beginning corner of the survey, according to which it is from the mouth of the creek N. 66° 56' E. 7 miles and 16 poles to the bank of the creek opposite the corner; then beginning for the survey of said corner, a lynn and hackberry, 4 poles above a large sycamore marked D A at B; thence up the creek, with the meanders thereof, binding thereon, N. 19 E. 18, N. 8 E. 28, N. 55 E. 163, N. 62 E. 60, N. 67 E. 41, N. 81 E. 82, East 20, S. 67 E. 50, S. 23 E. 25, S. 60 E. 28, S. 80 E. 62, N. 88 E. 48, crossing Sewell's run at 34 poles, N. 45 E. 18, N. 25 E. 27, N. 17 E. 30, N. 4 E. 26, N. 23 W. 28, N. 7 W. 24, N. 10 E. 20, N. 15 E. 64, N. 20 W. 13, N. 20 E. 29, N. 43 E. 66, crossing Cowan's creek at 32 poles, N. 39 E. 40, N. 79 E. 54, N. 33 E. 53, N. 80 E. 72, S. 76 E. 14, N. 73 E. 25, N. 24 E. 21, N. 20 W. 52, N. 30 E. 14, N. 74 E. 10 poles, to C; thence, at right angles with the general course of the creek, S. 38 E. $370\frac{1}{16}$ poles, to D; thence S. 52 W. 1000 poles, to E; thence N. 38 W. $370\frac{1}{16}$ poles, to the beginning, containing two thousand sixty-six and two-thirds acres. The dotted lines represent the boundary of the patent. The course continued from C, N. 74 E. 8, N. 54 E. 15 poles, to two sycamores, one of them washed down, and an elm at F, in the lower line of Thomas Baytop's survey No. 2373, where the upper line of Stephen T. Mason's survey No. 1507 crosses the fork; thence with said line S. 38 E. 390 poles, passing the corner of Ambrose Dudley's survey No. 2189 at 100 poles, and with his line to a stake at G, in said line; thence S. 53 W. 1028 poles, crossing Cowan's creek, several branches, and the East fork of Todd's fork, to four white oaks at H; thence N. 37¼ W. 375 poles, crossing the East fork at 295 poles, to the beginning at B, containing, between the dotted and black drawn lines, one hundred forty-eight and one quarter acres of land.

NATHAN LINTON, *S. C. C.*

LEMUEL VESTAL,
WILLIAM W. HOWELL. } *C. C.*

December 9, 1820.

THE STATE OF OHIO, *Clinton county, ss.*

I, Isaiah Morris, clerk of the court of common pleas for the county of Clinton aforesaid, do hereby certify that the aforegoing is the original survey and return made by Nathan Linton, Esquire, county surveyor for the county aforesaid, duly exhibited and used as evidence on the hearing of the said suit in chancery, wherein Duncan McArthur was complainant, *versus*

William Lytle et al. in our said court of common pleas, at the term of December, in the year of our Lord one thousand eight hundred and twenty.

In testimony whereof, I hereunto set my hand, and affix the seal of our said court of common pleas, at Wilmington, the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and twenty-five.

ISAIAH MORRIS, *Clerk.* [L. S.]

And now, at this day, to wit, on the day, in the year, and at the place first herein aforesaid mentioned, this cause was set for hearing upon the bill, answers, exhibits, and testimony, and was agreed by counsel, so far as relates to the jurisdiction of this court over the matter as raised by the papers on file; and after mature deliberation it is of the opinion of this court, that the deed under which the complainant claims the land in controversy in this cause was fraudulently made to him for the purpose of giving this court jurisdiction, and not bona fide, or upon good or sufficient consideration; therefore, it is ordered by this court, that this cause be dismissed for want of jurisdiction, testimony, &c.

Know all men by these presents, that I, David Bradford, formerly of Washington county, of Pennsylvania, now of New Feliciana, in the province of West Florida, for divers good causes and considerations me hereunto moving, have made and constituted and appointed my son Abelard Bradford my true and lawful attorney, to collect all debts due to me on bond, bill, note, account, or arising upon contracts of any nature whatsoever, either in the States of Kentucky, Ohio, Virginia, Pennsylvania, or Maryland, and to bring suits, if necessary, in my name, and to do all things in the conducting the same to final judgment, and, upon the receipt of any sum or sums of money, to give acquittance or receipts therefor, in my name, as effectually as if I were personally present; and I do further authorize and empower him, the said Abelard Bradford, to make sale of any lands which he may think proper to sell in either of the aforesaid States, to which I may have title, and in my name to make legal conveyances and titles as firm and substantial in law and equity as if I were personally present performing the same act; and I do hereby ratify and confirm every act legally done by my said attorney, in virtue of the above authority.

In witness whereof, I have hereunto set my hand, and affixed my seal, this 29th September, 1805.

DAVID BRADFORD. [SEAL.]

Done in presence of
JOHN MILLS.

ORLEANS TERRITORY, sct. *County of Point Coupee, to wit:*

David Bradford appeared before me in proper person, and did acknowledge the above and within power of attorney to be his act and deed, passed for the purpose therein expressed. Acknowledged this 30th of September, 1805.

J. PAYDRAS,
Judge of the county of Point Coupee.

ORLEANS TERRITORY, sct. *Point Coupee county, to wit:*

I do hereby certify that the honorable Julian Paydras is judge of the county of Point Coupee, and that, as such, full faith and credit is to be attached to all acts done and acknowledged before him, in any court of the

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United States. In testimony whereof, I have hereunto signed my name, not having as yet received my seal of office. Done this 30th September, 1805.

J. J. CONNELLY,
Clerk of the above court.

VIRGINIA, to wit:

At a district court holden at Morgantown, Monongalia court-house, May term, 1806, Monday the 19th, this letter of attorney from David Bradford to Abelard Bradford, with certificate of its acknowledgment, under the hand of J. Paydras, judge of the county of Point Coupee, was produced in open court, ordered to be recorded. Examined 18th April, 1806.

Teste: W. TINGLE CROW, *D. C.*

RECORDER'S OFFICE, *Ross county, Ohio, ss.*

I, Humphrey Fallarton, recorder for the county aforesaid, do hereby certify that the foregoing is a true copy from the records in my office. Given under my hand, at Chillicothe, January 3d, 1815.

HUMPHREY FALLARTON,
Recorder of Ross county, Ohio.

THE STATE OF OHIO, set.

To all whom it may concern, be it known, that Humphrey Fallarton, Esquire, who subscribes the within certificate, now is the recorder of the county of Ross, in the State aforesaid, duly appointed and commissioned as such; and that full faith and credit is, and of right ought to be, given to all his official doings and transactions, both in court and country.

In testimony whereof, I have hereunto subscribed my name, and caused the great seal of the State to be hereunto affixed, at Chillicothe, the 3d day of January, in the year of our Lord 1815, and in the 39th of the independence of the United States of America.

J. W. WORTHINGTON. [L. S.]

By the governor:
JOHN McLANE,
Secretary of State.

I certify that the foregoing is a true copy of a paper filed in this office, (general land office,) April 17th, 1826.

GEO. GRAHAM, *Commissioner.* [L. S.]

RECORDER'S OFFICE, *Ross county, Ohio, ss.*

I, Samuel Taggart, recorder for the county aforesaid, do hereby certify that the foregoing is a true copy of the power of attorney from David Bradford to Abelard Bradford, with the several authentications attached to the same, the original of which are recorded in this office.

Given under my hand and seal, at Chillicothe, this 12th day of June, 1826.

SAMUEL TAGGART, [L. S.]
Recorder of Ross county, Ohio.

Know all men by these presents, that I, James McDonald, of the county of Franklin, and State of Alabama, do hereby make, constitute, and appoint, and by these presents do make, constitute, and appoint, Duncan McArthur, of the county of Ross, and State of Ohio, my true and lawful attorney, for me and in my name and behalf, to manage, conduct, and direct a suit in chancery, in the federal court of Ohio, wherein I am plaintiff, and Thomas

Austin, James Harris, James Galloway, jr., and others, are defendants, for a certain tract of land lying on Todd's fork of the Little Miami, in the county of Clinton, and State of Ohio, being 1266¾ acres of land, part of entry No. 1529, entered by David Anderson on the 23d day of August, 1787; and which tract of land was conveyed to me by Duncan McArthur, by his deed, bearing date the 14th day of November, 1823, and recorded in the recorder's office, in Clinton county aforesaid; and I do hereby authorize and empower my said attorney, that if, in the prosecution of this suit in the federal court aforesaid, it will be necessary, in the opinion of my counsel, for my said attorney to execute any release of the premises aforesaid to William Lytle, of Cincinnati, or others, so as to enable him or them to become competent witnesses in the establishment of my claim to the land aforesaid, then, and in that case, he is hereby vested with full power for that purpose; and in general, I do hereby authorize and empower him to do all and every act and thing, which in his sound discretion he shall believe will legally conduce to the recovery of the land aforesaid, to the same extent and effect as if I myself were personally present to do the same. In witness whereof, I have hereunto set my hand and seal, this 18th day of July, 1825.

J. McDONALD. [SEAL.]

Witness: JAMES ELLIOTT, DAVID IRELAND.

STATE OF ALABAMA, *Franklin county.*

Personally came before me, a justice of the peace in and for the county aforesaid, the above named James McDonald, and acknowledged the foregoing letter of attorney to Duncan McArthur to be his act and deed, for the objects and purposes therein set forth in said letter of attorney. In witness whereof, I have hereunto subscribed my hand and seal, this 18th day of July, 1825.

COLLIN BISHOP, *J. P.* [SEAL.]

STATE OF ALABAMA, *Franklin county.*

I, Joseph Wofford, clerk of the county court for the county aforesaid, do hereby certify that Collin Bishop is an acting justice of the peace for said county, and that all due faith and credit should be given to his official acts as such. Given under my hand, and seal of office, at office, the 19th July, 1825.

JOS. WOFFORD, *Clerk C. C.* [L. S.]

THE STATE OF ALABAMA, *Franklin county.*

I, Gregory D. Stone, judge of the county court of said county, do hereby certify that Joseph Wofford is the acting clerk of the county court of said county, and that full faith and credit should be given to all his official acts as such. Given under my hand, this 19th day of July, 1825.

GREGORY D. STONE,
Judge of Franklin county court.

No. 307. THE STATE OF OHIO, *Clinton county, ss.*

RECORDER'S OFFICE.

This letter of attorney was entered for record 26th August, and recorded 26th September, 1825, in book D, page 296, one of the land records for Clinton county aforesaid.

JOHN McMORRIS, *R. C. C.*

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GENERAL LAND OFFICE, 10*th November*, 1818.

SIR: The information desired to be given in your letter of 26th ult. is attached to the next side of this paper. A certified copy of the patent granted by the United States to Richard C. Anderson, for 1900 acres on survey No. 2460, is herewith enclosed.

With due respect,
Your most obedient servant,
JOSIAH MEIGS.

DUNCAN MCARTHUR, Esq., *Chillicothe.*

Were recorded:

Vol. 1, 7, Stephen T. Mason's survey No. 1506, on warrant No. 2743, &c., patented to himself; patent dated 29th April, 1796.

Vol. 1, 9, ditto ditto survey No. 1507, on warrant No. 2705, &c., ditto ditto same day.

Vol. 3, 74, William Boyce's survey No. 2245, on part of warrant No. 3671, patented to himself 26th March, 1802.

Vol. 3, 81, ditto ditto survey No. 2227, on part of same warrant, patented to himself 5th April, 1802.

Vol. 1, 381, Archibald Campbell's survey No 2249, on part of warrant No. 3001, patented to Richard Campbell, devisee of Richard Campbell, who performed the service; patent dated 2d March, 1799.

Vol. 7, 398, Richard Stark's survey No. 2754, on part of warrant No. 137, patented to William Lytle 25th September, 1815.

Vol. 3, 451, James Galt's survey No. 451, on part of warrant No. 194, patented to Abel Westfall 10th March, 1804.

Vol. 3, 450, ditto ditto survey No. 634, on part of same warrant, patented to ditto same day.

The following assignment is written on the back of James Galt's survey No. 634, viz:

"I do assign this warrant to Abel Westfall, but will not be answerable for any expense attending the survey. Given under my hand, this 5th day of March, 1798.

"JAMES GALT.

"Test: ABNER NEWMAN."

The following assignment is endorsed on survey No. 451, viz:

"I do assign the within warrant to Mr. Abel Westfall, given under my hand, this 5th day of March, 1798, but will not be answerable for any expenses attending the survey.

"JAMES GALT.

"Test: ABNER NEWMAN."

This indenture, made this thirty-first day of August, in the year of our Lord one thousand eight hundred and twenty-five, between James McDonald, of the county of Franklin, and State of Alabama, of the one part, and William Lytle, of the city of Cincinnati, county of Hamilton, and State of Ohio, of the other part, witnesseth, that whereas the honorable the court of common pleas of the county of Clinton, in the State of Ohio, in a certain

suit in chancery, then and there depending before them, wherein Duncan McArthur was complainant, and the said William Lytle was defendant, did order, direct, and decree partition between the said parties, of a certain entry made in the name of David Anderson, No. 1529, which had been patented to them as tenants in common, without designating the proportion of each; and in and by said decree it was provided that the said Lytle should hold eight hundred acres, part of said entry which had been laid off to him at the lower end of said entry on Todd's fork, and that said McArthur should hold in severalty twelve hundred and sixty-six two-thirds acres, the upper end on said creek of said entry, which is bounded and described as follows, to wit: Beginning on the bank of Todd's fork at two sugar trees, mulberry, and ironwood, marked as a corner, about 340 or 350 poles, by the meanders of Todd's fork, from the beginning corner of David Anderson's said entry No. 1529, which is a horn beam marked D A, two buckeyes, a hackberry, and lynn, and at the point where the partition line between said McArthur and Lytle intersects Todd's fork; running up Todd's fork with the meanders called for in the original survey of David Anderson, East 16 poles, S. 67 E. 50, S. 32 E. 40, S. 70 E. 56, N. 85 E. 86 poles, crossing a branch at 54 poles, N. 27 E. 68, North 40, N. 18 W. 24, North 38, N. 16 E. 68, N. 65 W. 12, N. 25 E. 36 poles, N. 45 E. 56, crossing Cowan's creek at 20 poles, N. 40 E. 48, East 29, N. 70 E. 20, N. 27 E. 48, N. 83 E. 80, East 32, N. 10 W. 58, N. 58 E. 34 poles, to three sycamores, one of which is marked D A; and in the lower line of Thomas Baytop's survey No. 2373, where the upper line of Stephen T. Mason's survey No. 1507 crosses the fork; thence with said line S. 37 E. 375 poles, passing the corner of Ambrose Dudley's survey No. 2189, at 100 poles, and with his line to a stake in said line, being another of the original corners of said Anderson's survey No. 1529: thence S. 53 W. 670 poles, to a white oak and sugar tree in said Anderson's line; thence N. 37 W. 355 poles, to the beginning, containing twelve hundred sixty-six and two-thirds of an acre, be the same more or less, as from the records and proceedings in said cause, now on file in the said court of common pleas of the county of Clinton, reference being had thereunto, will more fully and at large appear. And whereas said McArthur has heretofore conveyed to me, the said James McDonald, my heirs and assigns, by deed duly executed and recorded, all his interest of, in, and to the above entry No. 1529, in the name of David Anderson: now this indenture witnesseth, that, for and in consideration of the premises, and of the sum of one hundred dollars, the receipt whereof, I, the said James McDonald, doth hereby acknowledge, and for ever acquit and discharge the said William Lytle, his heirs, executors, and administrators, hath remised, released, and for ever quit claim, and by these presents doth remise, release, and for ever quit claim, unto the said William Lytle, his heirs, executors, and administrators, all or all manner of action or actions, cause or causes of actions, suits, and demands, whatsoever, both at law and in equity, or otherwise, howsoever, which against him, the said William Lytle, I ever had, now have, or which I, my heirs, executors, or administrators can, shall, or may have, claim, or demand, for or by reason of the portion above made, in case the title to the above described twelve hundred and sixty-six and two-thirds of an acre of land and premises should prove defective and void. In testimony whereof, I, the said James McDonald, by my attorney in fact, Duncan McArthur, of the county of Ross, in the State of Ohio, whom I have duly appointed for that purpose, by my letter of attor-

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ney, dated the 18th day of July, 1825, have hereunto set my hand, and affixed my seal, the day and year first above written.

James McDonald. [SEAL.]

By his attorney in fact,

DUNCAN McARTHUR.

Witness present: JOHN BAILHOCHE, JAMES ROWE.

STATE OF OHIO, *Ross county, ss.*

Personally came before me, the subscriber, a justice of the peace in and for the county aforesaid, Duncan McArthur, the attorney in fact of James McDonald, and acknowledged the signing and sealing the above release from James McDonald to William Lytle to be his act and deed, for the purposes therein mentioned. In witness whereof, I have hereunto set my hand, and affixed my seal, this 31st day of August, 1825.

WILLIAM CREIGHTON, SEN., *J. P.* [SEAL.]

I acknowledge that the within deed of release was duly delivered to me, this day, the 9th of September, 1825.

WILLIAM LYTLE.

No. 324. RECORDER'S OFFICE, *Clinton county, Ohio.*

This deed of release was entered for record 14th September, recorded 10th October, 1825, in book D, pages 310 and 311, one of the land records for Clinton county aforesaid.

JOHN McMANUS, *R. C. C.*

Compared and examined.

J. McMANUS,

Recorder State of Ohio, Clinton county common pleas.

DUNCAN McARTHUR, *complainant,*
versus
WILLIAM SMALLEY, RICHARD CAST, WILLIAM HADLEY, JAMES GALLOWAY, Jr., WILLIAM LYTLE, and others, *defendants.* } *In chancery.*

The deposition of James Miranda, of lawful age, a witness for the complainant in the above cause, taken before me, Nathan Linton, county surveyor of Clinton county, at the mouth of Todd's fork of the Little Miami, on Monday, the 4th day of December, in the year A. D. 1820, between the hours of six o'clock in the morning and six o'clock in the evening of said day, agreeable to notice given, a copy of which is herewith returned. The said James Miranda, being duly sworn and cautioned the truth to speak, deposeth and saith, that he hath been acquainted with the mouth of the creek called Todd's fork for twenty-four or twenty-five years; that he has resided and owned the land at the mouth twenty-one or twenty-two years; that he has never known the creek by any other name but Todd's fork; that John Payton Harrison's survey of four thousand acres corners with my land at the mouth of Todd's fork, and extends up the Miami river and back; that the deponent's survey calls for the lower corner of Harrison's said survey a honey locust, buckeye, and sugar tree; that he has seen the sugar tree while standing, but does not recollect seeing the other trees called for.

Question by the complainant. How far do you suppose it to be from the mouth of Todd's fork to the mouth of Cæsar's creek?

Answer. About ten miles.

Question by same. How long have you been acquainted with Cæsar's creek, and know it by that name?

Answer. Ever since Harmer's campaign, which was thirty years past last fall.

Question by same. Do you consider Cæsar's creek the second large creek above the mouth of the East fork of the Little Miami?

Answer. I consider Todd's fork the first large creek, and Cæsar's creek the second; there is a creek below Todd's fork, called O'Bannan's creek, but considerable smaller than either of the other two.

Question by same. Is Smalley's mill on the creek you call Todd's fork, and does William Smalley reside on said creek?

Answer. Yes.

Question by same. Is the place you this day pointed out to the surveyor of Clinton county the place where the lower corner of Harrison's said survey was established by the surveyor of Warren county, on the oaths of William Trotter and Daniel Shawan and others, in March last?

Answer. It is.

Question by same. How far do you think the mouth of Todd's fork has removed from its original channel, or how much of the bank has fallen into the creek or river?

Answer. Since I have been acquainted with it I do not think it has altered more than one pole or thereabouts; and further this deponent saith not.

JAMES MIRANDA.

Also, the deposition of William Trotter, of lawful age, a witness for complainant, taken at the house of William Smalley, on Todd's fork of the Little Miami, on Tuesday, the 5th day of December, 1820, who being first duly sworn according to law, and cautioned the truth to speak, deposeth and saith, that about twenty-two years ago he moved to Mount's station, about two miles below the mouth of Todd's fork; that the same summer he hunted about the mouth of the creek, and saw at that time a corner marked at the mouth of the creek on the upper side, on a sugar tree and honey locust, that there was two letters marked on the honey locust, one of them was a W, the other he does not recollect; the sugar tree was marked, he thinks, with a marking-iron, some figures, but does not recollect what; he has since understood that it was the lower corner of John Payton Harrison's survey of four thousand acres.

Question by complainant. Have you been acquainted with Cæsar's creek, and how long since?

Answer. Yes, about twenty years.

Question by same. How far do you think it is above the mouth of Todd's fork?

Answer. Between nine and ten miles.

Question by same. Do you think Cæsar's creek the second large creek above the mouth of the East fork of the Little Miami?

Answer. I do, and Todd's fork the first large creek above the mouth of the East fork; O'Bannan's creek is below Todd's fork, which is a small creek compared with the other two creeks.

Question by same. Was you not called on in March last to establish the lower corner of John Payton Harrison's said survey?

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Answer. I was, and pointed out to the county surveyor of Warren the place where the corner stood, as near as I could recollect, the trees being now washed into the creek and gone.

Question by same. Did you ever know the creek by any other name than that of Todd's creek, or Todd's fork?

Answer. No; I have always known it by those names ever since I came to the country, and it is the same creek that William Smalley's mill is on; and further this deponent saith not.

his
WILLIAM × TROTTER.
mark

Personally appeared before me, on the 4th of December, 1820, James Miranda, at the mouth of Todd's fork, and on this day appeared William Trotter, and were each of them duly affirmed to the truth of the foregoing statements, each to the statement which he has subscribed.

Given under my hand and seal, this 5th day of December, eighteen hundred and twenty.

NATHAN LINTON, *S. C. C.* [SEAL.]

THE STATE OF OHIO, *Clinton county, ss.*

I, Isaiah Morris, clerk of the court of common pleas for the county aforesaid, do hereby certify that the within and foregoing are the depositions of James Miranda and William Trotter, as exhibited and used as evidence on the hearing of the cause of Duncan McArthur, complainant, *versus* William Lytle et al., defendants, to which they relate, in our said court, at the term of December, in the year of our Lord one thousand eight hundred and twenty-five.

In testimony whereof, I hereunto set my hand, and affix the seal of our said court, at Wilmington, the 26th day of September, A. D. one thousand eight hundred and twenty-five.

ISAIAH MORRIS, *Clk.* [L. S.]

THE UNITED STATES OF AMERICA, STATE OF KENTUCKY, ss.

The deposition of John Parker, taken before the undersigned, a judge of the circuit court of Fayette county, being a court of common pleas and of chancery, and of superior jurisdiction in the State aforesaid, duly appointed under the great seal of said State, and sworn and by law authorized and empowered to take depositions in this behalf, and to be read as evidence in an action in chancery depending in the United States' seventh circuit court for Ohio district, wherein James McDonald is complainant, and James Galloway, jr., and others, are defendants, taken on part of the complainant in said suit, on the 11th day of July, 1825, at Lexington, in the county and State aforesaid, at the tavern of Mrs. Keen, said Parker being of lawful age, and first duly sworn and cautioned to depose and testify the whole truth, who thereupon doth depose, testify, and say, that in the fall of the year 1786, or early in the year, say the fore part of the year 1787, Robert Todd lived in my family, was my wife's brother; fitted out for a tour over the Ohio, to explore the land reserved for military services in the Virginia continental line, to enable him to locate military warrants. He started from my house in Lexington, in company with John O'Bannan, Nath. Massie, and Gen.

John Hardin, who had been detained several days in Lexington by bad weather. When about to start, O'Bannan and Todd, the latter of whom had lived with me, assured me, that if I would procure warrants for 1000 acres, they would locate them, at a future day, on good land. After being out several weeks, some of the party returned to Lexington, O'Bannan and Todd to my house. They showed me a journal of part of their tour, and some memorandums for locating on sundry waters emptying into the Little Miami, on the east side, commencing at the mouth of said river, and descending the same. The first creek noted in the memorandum was called Clough creek, for the principal surveyor by whom they expected to be employed in that country. The next creek was called the East fork, where they made minute for me, and afterwards made my entry and survey of 6 or 700 acres there; the next noted was O'Bannan's creek, and made minutes for entries there; the next creek noted was Todd's fork, where minutes were made for location, in which said Todd himself had an interest, and so on to Cæsar's creek, Massie's creek, &c.; then passing on, and making minutes for locations on some of the waters of Paint creek, perhaps as low as its mouth; thence, by way of Pepe, and so on to Limestone, where they afterwards made another entry for me.

Question by complainant. At what time did the exploring party which you speak of return, and did you see their journals and memorandums before mentioned previous to the opening of Col. R. C. Anderson's office, on the 1st of August, 1787?

Answer. Some time in the spring, 1787, O'Bannan and Todd returned to my house in Lexington, and showed me a part of their journal, and particularly pointed out to me the mouth of the East fork of the Little Miami, where my location was to be made.

Question by same. After the return of said exploring party, as above stated, did you ever hear the creeks in the memorandums above mentioned, referred to, and named, called by another other names?

Answer. Never did.

Question by same. How early were you acquainted with Gen. Wm. Lyttle, and where?

Answer. I was acquainted with Gen. Lyttle in 1786, and ever since; he was then, and for some years after, about Lexington; he is now in Cincinnati.

Question by same. Were not Messrs. Todd, O'Bannan, Hardin, and Massie, the first you ever heard of exploring that part of Ohio in the said memorandums alluded to?

Answer. They were.

Question by same. Are not each of those persons dead?

Answer. I believe they all are.

Question by same. Did the journals or memorandums you saw contain notices of certain trees marked with the initials of the names of some of the party, at the spots where locations were intended to be made? and especially was there a tree marked with the initials of Todd's name, at the mouth of Todd's fork?

Answer. I can't with certainty say, but I rather think certain trees were noticed as above, as marked; but I saw, some years after, a tree at the mouth of Todd's fork above mentioned, when I went on the ground, which had the initials of Todd's name on it, marked with a tomahawk, and which ap-

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peared sufficiently ancient to correspond with the time of marking said memorandums; and further this deponent saith not.

JNO. PARKER.

Annexed: JESSE BLEDSOE.

STATE OF KENTUCKY, *County of Fayette, ss.*

At Lexington, in said county, on the 11th day of July, 1825, personally came before me John Parker, of said county, and State of Kentucky, and after being carefully examined, cautioned, and sworn, to testify the whole truth, did subscribe the within and foregoing deposition or testimony, after the same was reduced to writing by me; and I certify that said deponent now lives and resides at a greater distance than 100 miles from the place of trial, which is the cause of taking this deposition; that I am not of counsel or attorney to either of the parties, nor interested in the event of this cause: the adverse party not residing nor being, (so far as I know,) nor having any attorney, in my knowledge, residing or being within one hundred miles of the place of taking this deposition, was not notified, (I suppose,) and did not attend. In testimony whereof, I have hereunto set my hand and seal, the day and year last aforesaid.

JESSE BLEDSOE. [SEAL.]

UNITED STATES OF AMERICA, STATE OF KENTUCKY, set.

The deposition of Richard C. Anderson, taken before me, William Tompkins, a justice of the peace within and for the county of Jefferson, in the State aforesaid, duly appointed under the great seal of the said State, and by law authorized and empowered to take depositions, and being, by virtue of my said commission, one of the judges of the county court of the said county of Jefferson, which is a court of record. The said deposition to be read as evidence in action or suit in chancery, depending in the United States' seventh circuit court for the Ohio district, holden at Columbus, in said State, wherein James McDonald is complainant, and James Galloway, jr., and others, are defendants, taken on the part of the complainant in said suit, on the 20th day of July, 1825, at Soldier's Retreat, the residence of the deponent, in the said county of Jefferson, and State of Kentucky, who, being of lawful age, and first duly cautioned and sworn to depose the whole truth, thereupon doth depose, testify, and say, that he resides in the said county of Jefferson, more than 100 miles from the place of holding the said court; and furthermore he deposes and says:

Question by complainant. Does B. Hough and A. Bourne's map of the State of Ohio exhibit a pretty accurate sketch or geographical view of the Virginia military district between the Sciota and Little Miami rivers?

Answer. I think it does.

Question by same. Is the Little Miami, the East fork thereof, Todd's fork, and Cæsar's creek, tolerably accurately represented on the said map, so far as respects their general course?

Answer. I think they are.

Question by same. Was the East fork of the Little Miami, Todd's fork, and Cæsar's creek, each known in your office by their present respective names at the time and ever since the first entries were made on them, or calling for the said fork and creek?

Answer. The East fork and Cæsar's creek were; I had no knowledge of Todd's fork prior to the 21st day of August, 1787; on that day an entry was

made in the name of John P. Harrison, No. 1494, which entry calls for Todd's creek.

Question by same. Did you ever know the streams called the East fork, Todd's fork, and Cæsar's creek, by any other name?

Answer. The East fork and Cæsar's creek have been uniformly so called, and I never heard Todd's fork otherwise called than in the instance of entry No. 1494, as above stated. In all the other entries in my office, calling for this stream, it has been denominated Todd's fork, and, with that single exception, it has been as well known and as uniformly designated by this name, as the East fork or Cæsar's creek by their respective names.

Question by same. From the description given of Todd's fork in John P. Harrison's entry No. 1494, dated August 21st, 1787, which calls to begin at the mouth of the first large creek, 10 miles below the mouth of Cæsar's creek, could or could not a surveyor or any woodsman well acquainted with Cæsar's creek have readily found Todd's fork from the description in said entry, and have made locations upon said fork at that time?

Answer. I have no doubt of it.

Question by same. Were or were not Robert Todd, John O'Bannan, John Hardin, and Nathaniel Massie, among the first who explored the Virginia military district with a view of making locations?

Answer. They were.

Question by same. Are those persons or either of them now living?

Answer. They are all dead.

Question by same. Did you understand that those persons had explored the Miami country previous to the opening of your office on the 1st of August, 1787, and were they at the office at the time? and, if so, did they or did they not make some of the first entries that were made in the Virginia military district?

Answer. They had certainly explored that country previously to the opening of my office were present at the time; O'Bannan made an entry on the first day the office was opened, Hardin and Massie on the second, and Todd on the third.

Question by same. Were or were not the streams called the East fork of the Little Miami, Todd's fork, O'Bannan's creek, and Cæsar's creek, as notoriously known at your office by persons who did business there, in the first part of the year 1787 and afterwards, as any other creeks within the Virginia military district?

Answer. They were from the first of August, 1787; and further this deponent saith not.

RICHARD C. ANDERSON.

STATE OF KENTUCKY, *County of Jefferson, sct.*

At Soldier's Retreat, the residence of Richard C. Anderson, the deponent, in the said county of Jefferson, on the 20th day of July, 1825, before me, William Tompkins, a justice of the peace in and for the said county of Jefferson, duly commissioned, sworn, and acting as such, and by virtue of my said commission of the judges of the county court of said county of Jefferson, which is a court of record, personally came the said Richard C. Anderson, living and residing in the said county and State, and after being duly examined, cautioned, and sworn, to testify the whole truth, did deliver and subscribe the foregoing deposition or testimony, the same being reduced to writing by me. And I further certify that said deponent now lives or

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resides at a greater distance from the place of trial than 100 miles, which is the cause of taking this deposition; that I am not of counsel or attorney for either of the parties, nor interested in the event of the cause; the adverse party not residing or being, nor having any attorney, in my knowledge, residing or being within one hundred miles of the place of taking this deposition, was not notified, and did not attend; all which I certify as the cause and manner of taking this deposition. In testimony whereof, I have hereunto set my hand, this 20th day of July, 1825.

W. TOMPKINS, *J. P. J. C.*

I, Worden Pope, clerk of the county court of Jefferson county, in the State of Kentucky, do certify that William Tompkins, Esq., who has signed the foregoing certificate, is an acting justice of the peace in and for the said county, duly commissioned and sworn, and that as such, in virtue of the law of the State aforesaid, is one of the said court, with power to administer oaths and to take depositions, and that his official acts as such are entitled to full faith and credit; and also that John Bell, Esq., is the presiding judge of the said court. In witness whereof, I have hereunto set my hand, and the seal of the county aforesaid, this twentieth day of July, one thousand eight hundred and twenty-five, and in the thirty-fourth year of the commonwealth.

WORDEN POPE. [L. S.]

I, John Bell, presiding judge of the county court of Jefferson county, in the State of Kentucky, do certify that Worden Pope is the clerk of the said court, that his above and foregoing attestation is true and in due form of law, and therefore that the same is entitled to full faith and credit. Given under my hand and seal, this 21st day of July, 1825.

JOHN BULL. [SEAL.]

United States' 7th circuit court, Ohio district.

JAMES McDONALD, *complainant*,
versus
JAMES GALLOWAY, Jr., and others, *defendants*. } *In chancery.*

The defendants will take notice, that, pursuant to the act of Congress in such case made and provided, the complainant will, between the hours of 6 o'clock in the morning and 6 o'clock in the afternoon of Saturday, the tenth day of September next, 1825, take the deposition of William Lytle, of the city of Cincinnati, an aged and infirm man, and others, at the office of, and before the undersigned, mayor of the city of Cincinnati; and the same will be used on the trial of the above cause now depending and undetermined in the United States' seventh circuit court for the Ohio district.

ISAAC G. BARNET,
Mayor of the city of Cincinnati, August 18, 1825.

We, the undersigned defendants, acknowledge service of the within notice, September 5th, 1825. Thomas Austin, James Harris, George Yeazle, Samuel T. Lowden, William Hadley, John S. Wakeler, Thorinton F. Tyson, Henry Work, William Pyle, Ephraim Kibby, Rich. Cast, John Hadley, jr.

Service of this notice was made on defendant Galloway, by leaving a copy of it at his house, in the town of Xenia, on Tuesday, the 6th of September, 1825, by R. Kercheval.

Service of this notice was made on James Christie, and other defendants in this case, on Wednesday, the 7th of September, 1825, by Jacob Wysong, by leaving copies of it at their houses.

THE UNITED STATES OF AMERICA, STATE OF OHIO, *City of Cincinnati, ss.*

The deposition of William Lytle, taken before the undersigned, mayor of the city of Cincinnati, in the county of Hamilton, and State of Ohio, duly appointed and sworn, and by law authorized and empowered to take depositions, and to be read as evidence in a suit in chancery depending in the United States' seventh circuit court for Ohio district, wherein James McDonald is complainant, and James Galloway, jr., and others, are defendants, taken on the part of the complainant in said suit, on the tenth day of September, eighteen hundred and twenty-five, at the mayor's office in said city, and county and State aforesaid; and being of lawful age, was by me first duly sworn and cautioned to depose and testify the whole truth, who thereupon doth depose and testify and say as follows, to wit:

Question by complainant. Have you any interest, either direct or remote, in the event of the suit now depending and undetermined in the federal court of Ohio, wherein James McDonald is complainant, and James Galloway, jr., and others, are defendants?

Answer. I have no interest, that I know of, in the event of said suit.

Question by the same. At what time did you at first become acquainted with the Little Miami river, and its principal tributary streams emptying into it on the east or upper side?

Answer. I was first at the mouth of the Little Miami about the 12th day of April, 1780, and crossed the heads of the East fork of Miami, Todd's fork, as it is now called, Cæsar's creek, and the Little Miami, at the mouth of what is now known by Massie's creek, in the fall of 1786.

Question by the same. Did you march from Kentucky as a volunteer under the command of the *the* Col. Logan, afterwards Gen. Logan, against the Indians, which resided on the heads of Mad river and the Great Miami river, in September or October, 1786?

Answer. I did so.

Question by the same. On that expedition did or did you not cross the Ohio at Limestone, and take the old war trace, leading up Eagle creek and across the heads of White Oak, the East fork of the Little Miami, and what has since been known by Todd's fork, Cæsar's creek, &c., to the Old Chillicothe town on the Little Miami, near to where Xenia now stands?

Answer. We marched out on the old trace, across the watercourses you have mentioned, and passed through the Old Chillicothe town, near to where Xenia now stands.

Question by the same. If any thing remarkable occurred when marching out on the expedition, which enables you to recollect the creek called Todd's fork, you will please relate it.

Answer. We encamped one night on a considerable branch of what is now called and known by Todd's fork of the Little Miami, and where there had been formerly a considerable Indian encampment, and which is known by the name of the Deserted Camp, from a man's deserting from the army and going to the Indians; my horse strayed from the encampment during the night; the two first letters of my name, together with the day of the month and year, on a tree at the place where I found him; I returned to the

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camp, and found my saddle and baggage hanging upon a tree, the army gone; I did not overtake them until I got near the Old Chillicothe town.

Question by the same. Were the lands on Todd's fork of a quality to attract your particular attention and notice at that time, as affording a good prospect for making a location so soon as Richard C. Anderson's office should be opened for making locations on the north side of the Ohio river?

Answer. The lands, generally speaking, were of an excellent quality, particularly so about where I found my horse; and the object of marking a tree near the mouth of a branch emptying into the creek was with a view of making entries as soon as the office opened for locating warrants and surveying lands in the Virginia military reservation, between the Little Miami and Sciota, which was then shortly expected.

Question by the same. On your return to Kentucky from this campaign, did you communicate to any person or persons an account of the situation or quality of the soil on the stream since called Todd's fork? if so, please to state, so far as your memory will serve you, the names of the persons to whom you communicated this information.

Answer. On my return from this campaign to Kentucky I met with Mr. Robert Todd at the house of my father, who had just returned from an expedition under Gen. Clark up the Wabash, and was very anxious to hear what kind of a country we had passed through, and particularly that part of it east of the Little Miami; I then told him of the fine lands I had seen in different parts, and particularly on several small creeks on the south and east of a creek called Cæsar's creek, by Simon Kinton and Daniel Roone. Todd and myself then agreed that we would get two or three others of our acquaintances, and go over, and explore the country, in order that we might be prepared to enter lands as soon as the office would be open; Todd mentioned to O'Bannan, Massie, and Hardin, who readily agreed to be of the party.

Question by the same. Who were the persons that composed this exploring party, what time did they set out, and at what time did they return?

Answer. John O'Bannan, Robert Todd, Nathaniel Massie, John Hardin, and I think some others, names not now recollected, set out together, as well as I recollect; they were absent about six weeks, and returned in April or May, 1787.

Question by the same. Did or did not each of those persons, after Col. Anderson's office was first opened for making locations, on the 1st of August, 1787, form separate and distinct companies of their own, for making locations and surveys?

Answer. They did; and these were the men that made the principal part of the entries in Anderson's office, for some years after the office was open. The people who had warrants to locate, knowing these men to have a general knowledge of the country, preferred applying to them to locate their warrants, rather than run the risk of doing it themselves.

Question by the same. At what time and place did you first see those gentlemen after they returned from their exploring expedition?

Answer. Some of them at my father's house, and some of them at Lexington, shortly after their return; I think in May, 1787.

Question by the same. Did or did they not tell you at that time that they went to the mouth of the Little Miami, and had travelled up it on the east side, marking as they went on, at the mouths of all the large streams or creeks, the names which they then gave them? if they did, you will be

pleased to state the names which they informed you they had given to them respectively, their relative situation and distance from each other, and the particular kind of trees, and marks made on them, at the mouths of those streams.

Answer. They informed me that they commenced at the mouth of the Little Miami, and travelled up upon the east side, marking on trees as they went on, at the mouths of all the large streams, the names that any of them were then known by, and giving names to the others which were not named before. The first was about two and a half or three miles above the mouth of the Miami, marked Clough creek, on, I think, an elm; the next was the East fork, about nine or ten miles up from the mouth of the river, marked East fork on a honey locust; the next was about twenty miles up, and marked O'Bannan's creek, No. 2, on a white oak, the lower side of the mouth of the creek; the next was about thirty two miles up from the mouth of the river, marked Todd's creek, No. 3, on a large sugar tree, which creek puts into the Miami about ten miles below the mouth of Cæsar's creek; and Cæsar's creek was likewise marked at the mouth, on a tree, Cæsar's creek; likewise Massie's creek, in the same way, as I have been told by persons who have said they had seen the marks, but for them I never looked; all the others I have seen, and found no difficulty in finding the creeks, by their names at their mouths, when I surveyed the land in 1791 and 1792. After the party returned in April or May, 1787, Todd and O'Bannan set out in June following, to make further examinations through that country, and Todd informed me on his return, that, finding the stream called Todd's fork to be much larger than he had at first supposed it to be, he had marked some trees at its mouth, on the lower side of Todd's fork In 1792, Nathaniel Massie and myself were at the mouth of Todd's fork; and upon my telling him the circumstance, he went and examined the trees on the lower side of the fork, and found a beech marked "Todd's fork" with a marking iron, much defaced by the Indians or some other persons having hacked the tree with a tomahawk, and cut out some of the letters.

Question by the same. Have you ever seen the trees marked by the above explorers, at the mouths of the creeks above named; if so, at what time did you first see them? and did the marks appear to be of an age which corresponded with the time when the explorers made them, in the fore part of the year 1787?

Answer. I have; I first saw the creek above referred to, marked as high as Todd's fork in the fall of 1791, and that of Cæsar's creek in the fall 1792, and frequently since in passing through the country, and the marks appeared to be of an age with the date of 1787, when they were made by the exploring party.

Question by the same. Were the marks or names made on the trees standing at the mouths of those creeks or streams, and particularly that made at the mouth of Todd's fork, by the explorers, who first gave the names to those creeks in the early part of the year 1787, such as any surveyor or subsequent explorers could readily have seen, and understood for what purpose or object they were made?

Answer. I think they were, and might have been readily understood by any woodsman, or surveyor or surveyors, who travelled upon the banks of the river.

Question by the same. What circumstance prevented you from accompanying the above named explorers in the spring of 1787?

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Answer. My father then lived on the frontiers, and had suffered much from the savages stealing his horses, and, having one of his houses burned, was compelled, after contesting the point for two years, to abandon his situation, and move into the interior of the country, six miles below Lexington; and while I was engaged assisting my father to move, the exploring company set out, and I was prevented from accompanying them.

Question by the same. What prevented you from attending at Anderson's office when it was first opened on the 1st of August, 1787?

Answer. I was prevented in consequence of having received several severe wounds from the savages, and having both my arms broken.

Question by the same. Did or did not Robert Todd, Nathaniel Massie, John O'Bannan, and others, call to see you in the fall of the year 1787, whilst you lay wounded, and after they had returned from making their first entries at Col. Anderson's office? and if so, please to state the conversation which occurred between you and them, in reference to their naming the watercourse which empty into the Little Miami on the east side, and specialty and notoriety of the entries which they had made on those streams.

Answer. They did call to see me while I lay wounded at my father's, which I think was late in the fall, from the circumstance that the weather was cold, and there was snow on the ground at the time; and as I find, from the entries of Anderson's books in my possession, that there were no entries made from the 6th of November, 1787, till the 10th of January, 1788, I suppose it was about that time that the surveyors and locators broke up and went home. I recollect of asking those gentlemen whether they supposed they had identified their entries sufficiently; they told me they thought they had, by naming the watercourses in the manner aforesaid, by marking their names at the mouths of the different streams, and by commencing their entries at those points, and calling for binding on each other, or by giving course and distance from those notorious points to the places where they commenced new sets of entries; and, as all the locators were at the office of Anderson, the surveyor general of the district, that the thing was generally understood amongst them, and has continued to be so ever since.

Question by the same. Have or have not Clough creek, East fork, O'Bannan's creek, Todd's fork, Cæsar's creek, and Massie's creek, been known by those names, respectively, ever since the spring or fore part of the summer of 1787, or have they been, since that period, known by any other names?

Answer. They have always been called by the names which they now bear ever since that time, and by no other name whatever.

Question. Were there any white settlements within the Virginia military district prior to August, 1787?

Answer. None that I know of.

Question by the same. Was not the spring or fore part of the summer of 1787 the period at which the whites at first gave names to the principal watercourses emptying into the Little Miami on the east side, and to those within the Virginia military district generally?

Answer. It was; and they were confirmed afterwards by Anderson's record.

Question. Were not Clough creek, East fork of the Little Miami, Todd's fork, Cæsar's creek, and Massie's creek, known to the different companies of locators, by their respective names, so early as the first of August, 1787?

Answer. I believe they were generally known to all the locators of the Virginia military district by their names at that time and since.

Question by the same. Did or did not the description given of Cæsar's creek in Lieutenant John Harrison's entry No. 528, dated August 4th, 1787, and that of Todd's fork, given in John Harrison's entry No. 1494, dated August 21st, 1787, render those streams notorious in Col. Anderson's office to all subsequent locators from and after the date of these entries?

Answer. I am clearly of that opinion.

Question by the same. From the description given of Todd's fork in John P. Harrison's entry No. 1494, dated August 21st, 1787, which calls to begin at the mouth of Todd's creek, which is the first large creek emptying into the Little Miami, ten miles below the mouth of Cæsar's creek, would you or any surveyor or good woodsman have readily gone from the nearest settlements to said creek, and made entries upon it as early as the 22d of August, 1787?

Answer. I certainly could have done so myself, and think any good woodsman or surveyor could have done the same.

Question by the same. Were or were not Todd, O'Bannan, and Massie in the habit of communicating information of the country, the names and situations of its watercourses, the quality of its soil, and such other information as would naturally grow out of the expedition which they had made in the early part of the year 1787, through the Miami country, to their friends and acquaintances generally?

Answer. They were.

Question by the same. At what time did you first become acquainted with Cæsar's creek? and from what circumstance did it first receive its name?

Answer. I first became acquainted with that creek in the fall of 1786, when on Logan's campaign. With respect to its being named, as well as I now recollect, it was from hearing Col. Boone and Simon Kenton relate the circumstance of a negro man being captured by the Indians from Kentucky, whose name was Cæsar, and was found on that creek by the men in Bowman's army in 1779, who informed the army that Cæsar's creek was called after himself.

Question by the same. Who made the entries on Todd's fork generally?

Answer. They were made generally by Todd, Massie, and O'Bannan; ten or twelve thousand acres by Todd, at the mouth of the creek, and some distance up it; about eighteen or twenty thousand made by Massie, on the upper side of Todd's entries, and extending up the creek a long ways; and the balance made from the upper boundaries of Massie's, generally over the heads of Todd's fork, by John O'Bannan; there were others that made a few locations.

Question by the same. What was the inducement for you to purchase an interest in David Anderson's entry No. 1529, on Todd's fork?

Answer I had sold a part of my entry No. 2754, in the name of Richard Stark, to William Smalley and others, long before I knew anything of David Anderson's entry, as Col. Richard C. Anderson had overlooked it when he furnished Nathaniel Massie and myself with copies of entries on that creek to make surveys on. Some years after I had returned my survey in the name of Stark, Massie discovered David Anderson's entry had been omitted; and knowing that I had sold part of the land which it would cover to William Smalley, by virtue of my entry in the name of Starks, he notified me of it, and told me, as it was a special entry, and would certainly hold all

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the land it would cover, I had better buy as much of it at least as would interfere with my grant to Smalley, so as to secure him his lands and improvements. Not knowing how much it would require, I bought eight hundred acres off the lower end of David Anderson's entry of Bradford, the then owner, including Smalley's improvements; and Gen. McArthur bought the remaining 1266 acres above, lately divided by the commissioners, and confirmed by the court of Clinton county.

Question by the same. Are either Robert Todd, John O'Bannan, Nathaniel Massie, or John Hardin, now living?

Answer. No, neither of them.

Question by defendant. When speaking of the names of Todd's fork and the other creeks being known since 1787, do or do you not allude to the circumstance before related, of their being named by O'Bannan, Massie, and others?

Answer. I do.

Question by the same. How far is Todd's fork from Anderson's office?

Answer. It is one hundred and fifty miles, more or less.

Question by the same. Were there not, in 1787, and before, settlements at Washington, Maysville, and on the waters of Licking?

Answer. There were settlements at Maysville, Washington, and on the waters of Licking.

Question by the same. Were not these settlements much nearer to Todd's fork than Anderson's office?

Answer. They were.

Question by the same. Do you know that there was any general knowledge of the name of Todd's fork in those settlements at that time?

Answer. I do not know whether there was or not; the surveyors severally travelled that road, and crossed the river at Limestone.

Question by the same. Was you not a party to this suit when it was first commenced?

Answer. I was at the commencement of the suit, but my name has been stricken out, as I have been informed, and the complainant, McDonald, has executed to me a deed of release, bearing date August 31st, 1825.

Question by the same. Was not Anderson's entry originally patented to yourself and Duncan McArthur, as tenants in common?

Answer. It was.

Question by the same. Are you not bound by your deed or obligation to Smalley, to maintain to him the title to a part of the land included in Anderson's entry?

Answer. I am.

Question by the same. Is not Simon Kenton yet living?

Answer. I believe he is.

And further deponent saith not.

WILLIAM LYTLE.

THE STATE OF OHIO, *City of Cincinnati, ss.*

At my office, in said city, on the tenth day of September, eighteen hundred and twenty five, before me, Isaac Barnet, mayor of the said city of Cincinnati, personally came William Lytle, of said city, and after being carefully examined, and cautioned, and sworn, to testify the whole truth, did subscribe the foregoing deposition or testimony, after the same was reduced

to writing by me; and I certify that said deponent now lives or resides at a greater distance from the place of trial than one hundred miles, which is the cause of taking this deposition; that I am not of counsel or attorney to either of the parties, nor interested in the event of this cause. The adverse party being or residing within one hundred miles of the place of taking this deposition was notified, and did attend by their counsel.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said city, September 10th, 1825.

ISAAC BARNET, *Mayor.* [L. S.]

THE UNITED STATES OF AMERICA, THE STATE OF OHIO, *Warren county, ss.*

The deposition of James Miranda, taken before the undersigned, one of the associate judges of the court of common pleas within and for the county of Warren, and State of Ohio aforesaid, duly appointed under the great seal of said State, and sworn and by law authorized to take depositions to be read as evidence in an action in chancery depending in the United States' seventh circuit court for Ohio district, wherein James McDonald is complainant, and James Galloway and others are defendants, taken on the part of the complainant, in said suit, on the 12th day of September, 1825, at the house of William Fergerson, in the town of Lebanon, in the said county of Warren, and State aforesaid, and being of lawful age, was by me first duly sworn and cautioned to depose and testify the whole truth, who thereupon doth testify, depose, and say, as follows, to wit: That he has been acquainted with the mouth of the creek called Todd's fork for 27 or 28 years; that he has resided and owns the land at the mouth of Todd's fork for 24 or 25 years; that he has never known the creek by any other name but Todd's fork; that John P. Harrison's survey of 4000 acres joins his land at its mouth, and extends up the Miami river and bank; that the deponent's survey calls for the lower corner, Harrison's said survey, a honey locust, buckeye, and sugar tree; that he has seen the sugar tree whilst standing, but does not recollect seeing the other trees called for.

Question by complainant. How far is the mouth of Todd's fork below the mouth of Cæsar's creek?

Answer. About ten miles.

Question by same. Do you consider Cæsar's creek the second large creek above the mouth of the East fork of the Little Miami river?

Answer. I consider Todd's fork the first large creek, and Cæsar's creek the second. There is a creek below Todd's fork, called O'Bannan's creek, but considerably smaller than either of the other two.

Question by same. Were you informed that the stream called Todd's fork was named after himself, by Robert Todd, of Kentucky?

Answer. I was so informed.

And further this deponent saith not.

JAMES MIRANDA.

THE STATE OF OHIO, *Warren county, ss.*

At the house of William Fergerson, in the town of Lebanon, in the county and State aforesaid, on the 12th day of September, 1825, before one of the associate judges of the court of common pleas within and for the county and State aforesaid, personally came the above named James Miranda, who subscribed the foregoing deposition, after the same was reduced to

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writing by me; and I certify that said deponent is an aged man, which is the cause of taking this deposition; that I am not of counsel or attorney to either of the parties, nor interested in the event of this cause. The adverse party residing or being within one hundred miles of the place of taking this deposition was notified of the time and place of taking the same, and did attend. In testimony whereof, I have hereunto set my hand, the day and date above written.

GEO. KESLING, *A. J.*

THE UNITED STATES OF AMERICA, STATE OF OHIO, ss.

The deposition of Daniel Shawhan, taken before the undersigned, one of the associate judges of the court of common pleas within and for the county of Warren, and State aforesaid, duly appointed under the great seal of the said State, and sworn, and by law authorized and empowered to take depositions, and to be read as evidence in an action in chancery depending in the United States' seventh circuit court for Ohio district, wherein James McDonald is complainant, and James Galloway and others are defendants, taken on the part of the complainant in said suit, on the 12th day of September, 1825, at the house of William Fergerson, in the town of Lebanon, in the county of Warren, and State aforesaid, and being of lawful age, was by me first duly sworn and cautioned to depose and testify the whole truth, who thereupon doth testify, depose, and say, as follows, to wit: That he has resided on Todd's fork, near its mouth, for between twenty-five and twenty-eight years, and has never heard it called by any other name; this deponent considers it the first large creek emptying into the Little Miami above the mouth of the East fork. There is a small creek between it and the East fork of the Little Miami, called O'Bannan's creek. There is also a large creek about ten miles above it, emptying into the Little Miami, called Cæsar's creek. About twenty-eight years ago, he (this deponent) saw a sugar tree, marked No. 3, standing at the junction of Todd's fork, on the upper side of said fork and the Little Miami, which he understood was the beginning corner, and has since been established as the beginning corner of John Payton Harrison's entry of 4000 acres; that he (this deponent) should judge the tree had been marked about 10 years before that time; he thinks the other trees called for as the beginning of said Harrison's entry were washed away, as the bank had the appearance of being washed down: the tree above mentioned, marked No. 3, was washed away about eighteen years since. This deponent thinks that the bank, at the mouth of Todd's fork, where the timber stood, marked as the beginning corner of said Harrison's entry, has, within the time of his knowing it, washed away between one and two poles. This deponent has understood that the creek called Todd's fork was so named by Mr. Robert Todd, of Kentucky, when exploring the country in the early part of the year seventeen hundred and eighty seven. This deponent believes it has always since been known by that name. This deponent heard of Todd's fork, by that name, four or five years before he settled on it, at which time he was living in the State of Kentucky; that at that time he received such correct information of its situation, that, upon his afterwards coming to the country as above stated, he found the creek without difficulty. This deponent recollects it was described to him as emptying into the Little Miami, about four miles above Deerfield, which he found to be the fact.

Question by complainant. Is there a creek emptying into Todd's fork, called the Little East fork?

Answer. There is, and sometimes called Little Todd's fork; this stream enters into Todd's fork a short distance below Mr. Smalley's farm.

Question by same. Were you or were you not one of the first white men that settled the vicinity of Todd's fork, and were you in the habit of hunting on that stream for many years before the country was settled about it?

Answer. I was one of the first or nearest white settlers to Todd's fork, and was in the habit of hunting on that stream for a considerable time before there were any settlements made upon it.

Question by same. Was there any thing in the general appearance of the country through which Todd's fork passed, or any thing at the mouth of Todd's fork, which rendered difficult to know said stream upon reaching its banks, and particularly its mouth?

Answer. There was not. I believe that Todd's fork could have been as easily found as any other stream in a new country.

Question by same. From the description which was given you of Todd's fork by the persons who first described to you, had you any difficulty in knowing it to be Todd's fork when you first saw it?

Answer. I had not.

Question by same. Do you believe that if the said stream had been as correctly described to a woodsman or surveyor acquainted with travelling in woods, in the early part of the year 1787, as it was to you, and as in all likelihood Robert Todd, who first named it, did after his return from exploring the country in 1787, could it have been as easily found and known by them as it was by you when you first saw it?

Answer. I think it could.

Question by same. Have you or have you not always understood from persons acquainted in the country in early times, such as old hunters and surveyors, that the stream called Todd's fork was from the first called by that name, as generally known by the name of Todd's fork as the East fork of the Little Miami, or any other large creek within the military district?

Answer. I have always heard it called by that name, and no other, by every person whom I have heard speak of it.

Question by same. From the description given of Todd's fork in John P. Harrison's entry No. 1494, dated August 21st, 1787, (here the entry referred to was read to the deponent,) could you or any surveyor or good woodsman have readily gone from the nearest settlements to said stream at the date of said entry?

Answer. I think I could have gone there myself then, and that any good woodsman or surveyor might have done so too.

Question by defendant's attorney. At what did you first hear of the name of Todd's fork, or Todd's fork spoken of?

Answer. Not until after the year 1793, and was not personally known to it for two or three years afterwards.

And further this deponent saith not.

DANIEL SHAWHAN.

THE STATE OF OHIO, *Warren county, ss.*

At the house of William Fergerson, in the town of Lebanon, in the county of Warren, and State of Ohio aforesaid, on the 12th day of September, A. D. 1825, before the undersigned, one of the associate judges of the court of common pleas within and for the county of Warren aforesaid, personally

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came the above named Daniel Shawhan, who subscribed foregoing deposition, after the same was reduced to writing by me. And I certify that said deponent is an aged man, which is the cause of taking this deposition; that I am not of counsel or attorney to either of the parties, nor interested in the event of this cause. The adverse party residing or being within one hundred miles of the place of taking this deposition, was notified of the time and place of taking the same, and did attend. In testimony whereof, I have hereunto set my hand, the day and above written.

GEO. KESLING, *A. J.*

United States' 7th circuit court, Ohio district.

JAMES McDONALD, *complainant*,
versus
JAMES GALLOWAY, Jr., and others, *defendants.* } *In chancery.*

It is agreed between Robert Kircheval, on the part of the complainant, and Francis Donlavy, on the part of the defendant, who have attended to taking the deposition of Daniel Shawhan and James Miranda, at Lebanon, on the 12th of September, 1825, before his honor Judge Kesling, that the same shall be read on the trial of the above cause, but subject to the judgment of the court as to their competency; and that the personal attendance of the said Shawhan and Miranda be dispensed with before the court, as the act of Congress provides.

R. KIRCHEVAL, *for the complainant.*
FRANCIS DONLAVY, *for defendant.*

UNITED STATES OF AMERICA, STATE OF KENTUCKY, *Jefferson county, ss.*

The deposition of Richard C. Anderson, taken before me, the undersigned, one of the justices of the peace in and for the county aforesaid, duly commissioned and sworn as such, and, by virtue of my commission, one of the judges of the county court of said county, to be read in evidence in a certain suit in chancery depending in the circuit court of the United States for the Ohio district, seventh circuit, wherein James McDonald is complainant, and James Galloway and others are defendants, on the part of the defendant in the said suit, on Monday, the 22d day of May, 1826, at the house of the said Richard C. Anderson, in the county of Jefferson, and State of Kentucky aforesaid; and the said Anderson, being of lawful age, was by me first duly sworn and cautioned to depose and testify the whole truth, and who thereupon, being interrogated, doth depose and say as follows, to wit:

Question by defendant. At what time was Todd's fork, a branch of Little Miami, first known to you by that name?

Answer. The 24th of August, 1787; an entry in the name of Augustus Slaughter, which was the first information I had of Todd's fork.

Question by same. Did you ever hear this stream called by the above name prior to August, 1787? from information of Robert Todd, John O'Bannan, Nath. Massie, did you not understand that they, in company with others, had, prior to that time, in the spring or summer of the same year, been over the Ohio together, exploring the country between the Little Miami and Sciota, with a view to making locations there, and that they had, while on said tour, named Todd's fork by that name?

Answer. I was apprised that several persons had crossed the Ohio, with a view of making locations, probably the persons named above.

Question by same. Do you know that Todd's fork was generally known by that name in the settlement of Limestone, Washington, Lee's Station, prior to the 24th of August, 1787?

Answer. I did not.

Question by same. Were you personally acquainted with the country between the Little Miami and Sciota prior to August, 1787? and when did you first visit that country?

Answer. I was not; I cannot say when I first visited that country.

Question by same. When was your office for making entries in the Virginia military district, between the Little Miami and Sciota rivers, opened the second time, or was it not on the 6th day of September, 1791?

Answer. I do not recollect that the office was closed at that time? but I believe there was an interruption, as stated in the next answer.

Question by same. Were there any entries made in your office northwest of the Ohio river, between the 27th day of August, 1788, and the 6th of September, 1791?

Answer. Not any.

Question by same. What is the length of the longest line of David Anderson's survey No. 1529 for 2066⅔ acres?

Answer. 1,000 poles.

Question by same. What is the greatest breadth of said Anderson's survey, and what is the least breadth, and what its average breadth?

Answer. The greatest breadth is 375 poles, the least about 175 poles, according to the plat.

Question by same. By whom and when was said Anderson's survey made? and when was it recorded by you?

Answer. Surveyed by William Litle the 4th of October, 1807, recorded the 30th May, 1808; and further this deponent saith not.

RICHARD C. ANDERSON.

COMMONWEALTH OF KENTUCKY, *Jefferson county, sc.*

The foregoing deposition of Col. Rich. C. Anderson was this day taken, subscribed, and sworn to, at his house, in Jefferson county aforesaid, before the undersigned, a justice of the peace in and for the county of Jefferson aforesaid. Given under my hand and seal, this 22d day of May, 1826.

JAMES BROWN. [SEAL.]

I, the clerk of the county court of Jefferson county, in the State of Kentucky, do certify that the above named James Brown, Esq., who has signed and sealed the above certificate, is an acting justice of the peace in and for the said county, duly commissioned and sworn, and that all his official acts as such are entitled to full faith and credit, and as such is a judge of the said court, and that said court is a court of record, and that John Bell, Esq. is the presiding judge of the said court. In witness whereof, I have hereunto set my hand, and affixed the seal of the said county, this twenty-second day of May, 1826, and in the 34th year of the commonwealth.

WORDEN POPE. [L. S.]

I, John Bell, presiding judge or senior justice of the peace of the county court of Jefferson county, in the State of Kentucky, do certify that the above attestation of Worden Pope, who is the clerk of said court, is in due form of law, and entitled to full faith and credit. Witness my hand and seal, this 22d day of May, 1826.

JOHN BELL, *J. P. J. C.* [SEAL.]

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The United States of America, 7th circuit court, Ohio district.

JAMES MCDONALD, *complainant,*
versus
RICHARD CAST, JAMES GALLOWAY, Jr., and others, *def'ts.* } *In chancery.*

The complainant, or General Duncan McArthur, his agent, will take notice, that, pursuant to the act of Congress in such case made and provided, the defendants will, on Thursday, the thirteenth day of April, 1826, (and continue from day to day until the whole be completed,) between the hours of six o'clock in the morning and six o'clock in the evening of said day, take the deposition of Simon Kenton, an aged man, and others, at the house of the undersigned, Levi Garwood, in Zane township, in the county of Logan, and State of Ohio, before the said Levi Garwood, one of the associate judges of the court of common pleas within and for the county of Logan, and State of Ohio, and that the same will be used on the trial of the above cause now pending and undetermined in the United States' seventh circuit court for the Ohio district. March 20th, 1826.

LEVI GARWOOD,
Associate judge of Logan county, State of Ohio.

STATE OF OHIO, *Ross county, ss.*

Mathew Bonner this day personally appeared, and made oath that he, this day, left at the house of General Duncan McArthur a notice, of which the above is a copy.

March 31st, 1826. MATHEW BONNER.

Sworn and subscribed before me, the undersigned, a justice of the peace in and for said county.

JAMES MILLER, *J. P.*

THE UNITED STATES OF AMERICA, STATE OF OHIO, ss.

The deposition of Simon Kenton, taken before the undersigned, an associate judge of the court of common pleas in and for the county of Logan, and State aforesaid, duly appointed under the great seal of the State of Ohio, and sworn, and by law authorized and empowered to take depositions, and to be used in evidence in an action depending in the United States' circuit court for Ohio district, wherein James McDonald is plaintiff, and Richard Cast, James Galloway, jr., and others, are defendants, on the part of the defendants in said suit, on the 13th and 14th days of April, 1826, at the house of Levi Garwood, in Zane township, Logan county, and State of Ohio, and being of lawful age, was by me first duly sworn and cautioned to depose and testify the whole truth, who thereupon doth testify and depose and say as followeth, to wit:

Question by defendants. How old are you?

Answer. I am now upwards of seventy years of age.

Question by the same. How long did you live in the State of Kentucky?

Answer. In the year 1775, I lived near Limestone, (now called Maysville,) in Kentucky, and raised corn there in that year; from that time until the year 1784 I was principally in the militia in the service of my country, in the wars with the Indians; in 1784 I settled Kenton's station, near Limestone, in what is now called Mason county, in Kentucky, and lived in said county near Washington, until I removed to the northwestern territory, now the State of Ohio, in the year 1799.

Question by the same. Were you acquainted with the country northwest of the Ohio river, between the Little Miami and Sciota rivers, in the year 1787, and before and after that time?

Answer. I was through that country twice in the year 1778; the first time I was on Paint creek; and on my second trip in that year, I took horses from the Indians near the Chillicothe town, on the Little Miami, and have frequently been through that country since, until the present time. From the year 1778 to 1794 I was often on scouts with parties of men under my command, and traversed the country between the Little Miami and Sciota rivers, in various directions, as high up the Little Miami as old Chillicothe, and as high up the Sciota as the mouth of Paint creek, and about where the town of Chillicothe now stands. I was pilot to General Clark's army on his campaign in 1780; I was pilot and commander of a company with Gen. Clark, in his campaign in 1782; in 1786 I was pilot, and commanded a company with Col. Logan, on his campaign in that year, and was afterwards through that country with scouting parties under my command until the year 1794.

Question by the same. What streams putting to the Little Miami or Sciota, were you acquainted with by their present names prior to the 23d of August, 1787?

Answer. I knew Paint creek, Deer creek, Sciota, Brush creek, and Pea creek, which are all branches of the Sciota river, and the East fork of the Little Miami, and Cæsar's creek, a branch of the Little Miami, by those names, prior to that time.

Question by the same. When did you first know the branch of the Little Miami, now called Todd's fork, by that name?

Answer. I never knew that fork by that name until after the office of Richard C. Anderson was open (for making locations) the second time; but the date when his office was opened the second time, I do not recollect.

Question by the same. Was the office of Richard C. Anderson opened the second time prior to the 23d of August, 1787?

Answer. No; his office was first opened for locating lands between the Little Miami and Sciota river about the first of August, 1787, and I know that it did not open the second time for two or three years after it was first opened, as I have stated, which I think was about the year 1790.

Question by the same. What were the nearest settlements to Todd's fork in 1787? and were you acquainted generally at those settlements?

Answer. Washington, Limestone, Warren's station, Stockdam's station, Lee's Creek station, John Kenton's station, Simon Kenton's station, and Lee's station, all of which were within fourteen miles of Washington, in Mason county, Kentucky, were the nearest settlements in 1787 to the branch of the Little Miami, since called Todd's fork; I was acquainted generally at all these settlements in 1787, and prior to that time, and I believe knew every man in each, who was capable of performing military duty, as the most, if not the whole of them, served under me as a military officer at one time or another.

Question by the same. Were you in the year 1787 acquainted at Lexington, Kentucky, and at the several stations between Limestone and Lexington?

Answer. In the year 1787 I was well acquainted at Lexington, Kentucky, and also at Brione's, Grant's, Garrard's, Miller's, and Riddle's stations, and prior to that time all of said stations were nearly between Lexington and Washington.

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Question by the same. Did you ever hear Todd's fork, a branch of the Little Miami, called by that name at Lexington, or at the stations between there and Washington, or at the stations and settlements near Washington, which you have stated were nearest to the branch now called Todd's, prior to the year 1787?

Answer. I never heard Todd's fork called by that name at any of the settlements or stations which I have mentioned, until after Anderson's office was open the second time, as I have already stated.

Question by the same. Were you in the year 1787 acquainted with John O'Bannan, Robert Todd, John Hardin, and Nathaniel Massie, and accustomed to associate with them in that year and prior to that time?

Answer. I was well acquainted with each of the men you have named in 1787, and prior to that time and afterwards, and accustomed to associate with them.

Question by the same. Did you ever hear either of the above named persons, to wit, O'Bannan, Todd, Hardin, and Massie, speak of Todd's fork by that name, prior to the time that Anderson's office was opened the second time?

Answer. I never did.

Question by the same. Did you not in early times, say prior to August, 1787, make many locations of land, and explore different parts of Kentucky, to enable you to make good locations?

Answer. Yes, I made a number of locations in Kentucky prior to August, 1787, and explored a considerable part of that country, in order to get such information as would enable me to make locations of lands.

Question by the same. Was it not in those early times you speak of a custom with surveyors and locators, when they had explored a country in which they intended making locations, to keep secret their knowledge of the country they had thus explored? with this view, or if they did not speak of it to their particular friends, was it not mostly in a confidential manner?

Answer. Information which thus acquired by surveyors and locators was always, so far as I know, kept secret, and seldom communicated even to their most intimate friends, particularly if they supposed there was any danger of another profiting by the disclosure.

Question by the same. Was it customary in Kentucky in 1787, and prior to that time, to call the same watercourses by the names of forks and creeks indifferently? for instance, was the Beach fork, and the North fork of Licking, or the Rolling fork, and Flaud's fork of Salt river, as generally called Beech creek, North creek, Rolling creek, or Floyd's creek, as by the names first mentioned?

Answer. I never, to my knowledge, heard any of the above streams called by any other names than Beech fork, the North fork, Rolling fork, Floyd's fork, in the year 1787, or before or since that time, except that I heard the North fork of Licking sometimes called the East fork.

Question by the same. Have you known Todd's, a branch of the Little Miami, by that name from the time that Anderson's office opened the second time until now? and have you ever known it by the name of Todd's creek?

Answer. I have known Todd's fork, a branch of the Little Miami, by that name from the time that Anderson's office opened the second time until now, and never recollect to have heard it called by the name of Todd's creek.

Question by the same. Do you not believe, that from your knowledge of the country between the Little Miami and Sciota rivers, that prior to August, 1787, and from that time until the year 1790, you were as well or better acquainted with the waters of the Little Miami as any other person?

Answer. I believe that prior to August, 1787, and until 1790, I was better acquainted with the waters of the Little Miami than any other white man then living, except those living with the Indians, as I had been more through that country than any other man of my acquaintance.

Question by the same. Were you acquainted with Benjamin Whiteman, now called General Whiteman, who now lives in Green county, State of Ohio, prior to August, 1787?

Answer. I was well acquainted with him prior to that time, for he had served under me on several scouts after Indians, on the northwest side of the Ohio river.

Question by the same. Where did scouting and exploring parties generally cross the Ohio river in their tours through the Indian country, between the Little Miami and Sciota rivers, from the years 1786 to 1790?

Answer. At Limestone, Kentucky, principally, and at many other places.

Question by the same. Is John O'Bannan, Robert Todd, John Hardin, or Nathaniel Massie, now living?

Answer. I have good reasons to believe that they are all dead.

And further this deponent saith not.

SIMON KENTON.

STATE OF OHIO, *Logan county, ss.*

At the house of the undersigned, Levi Garwood, in Zane township, Logan county, and State of Ohio, on the 13th day of April, 1826, and also on the 14th day of April, 1826, agreeable to the within enclosed notice before me, one of the associate judges of the court of common pleas within and for the county aforesaid, personally came the above named Simon Kenton, and did subscribe the foregoing deposition or testimony, after the same was reduced to writing by me; and I certify that the said deponent is an aged and infirm man, which is the cause of taking this deposition; and that I am not of counsel or attorney to either of the parties, or interested in the event of this cause. The attorney and the agent of the adverse party residing or being within one hundred miles of the place of taking this deposition, were notified of the time and place thereof, and did not attend.

In testimony whereof, I have hereunto set my hand, this fourteenth day of April, 1826.

LEVI GARWOOD,
Associate judge of Logan county, State of Ohio.

United States' seventh circuit court, Ohio district.

JAMES McDONALD, *complainant,*
vs.
JAMES GALLOWAY, and others, *defendants.* } *In chancery.*

The complainant will take notice, that, pursuant to the act of Congress in such case made and provided, the defendants will, on Tuesday, the 20th December instant, (and continue from day to day until the whole be com-

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pleted,) between the hours of 8 o'clock in the morning and 5 o'clock in the evening, take the deposition of Peter Lee, an aged and infirm man, and others, at the house of James Artus, in the town of Washington, before the undersigned, one of the justices of the peace within and for the county of Mason, and State of Kentucky, and that the same will be used in the trial of the above cause. Washington, 12th December, 1825.

JAMES ELLIS,
Justice of the Peace in and for the county of Mason, State of Kentucky.

STATE OF KENTUCKY, *Mason county, sct.*

Thomas Austin maketh oath that he did, on the 14th day of December, in the year 1825, deliver a true copy or duplicate of the within notice to a grown female, who, he understood, was the daughter of Thomas Scott, Esquire, attorney for the complainant, at his, the said Thomas Scott's, house, in the town of Chillicothe, and State Ohio, he being absent, as this affiant was informed by the female aforesaid, (and at Columbus,) and that he, this affiant, saw no other grown person at said Scott's house, except another female, who he understood was another daughter of his, said Scott's.

THOMAS AUSTIN.

Sworn to and subscribed before the undersigned justice of the peace and judge of the county court for the county aforesaid, this 20th day of December, 1825.

JAMES ELLIS.

UNITED STATES OF AMERICA, STATE OF KENTUCKY, *Mason county, sct.*

The deposition of Peter Lee and John Berkett, and Henry Lee and John Kenton, taken before the undersigned, one of the justices of the peace in and for the county aforesaid, duly commissioned and sworn as such, by virtue of my commission, one of the judges of the county court of the said county, to be read in evidence in a certain suit in chancery depending in the circuit court of the United States for the Ohio district, seventh circuit, wherein James McDonald is complainant, and James Galloway and others are defendants, on the part of the defendants in the said suit, on Tuesday, the 20th day of December, 1825, at the house of James Artus, in the town of Washington, in the county of Mason, and State of Kentucky aforesaid; and the said Peter Lee, aged about sixty-six years, was by me first duly sworn and cautioned to depose and testify the whole truth, and who thereupon, being interrogated, doth depose and say as follows, to wit:

Question by defendant. When and where did you first settle in the western country?

Answer. Near Limestone, in Kentucky, in the year 1785, about four miles from Limestone landing, and have resided here ever since.

Question by same. Are you acquainted with a branch of the Little Miami river, in the State of Ohio, now called Todd's fork, or with the section of country about the mouth of that branch?

Answer. In the year 1794 I crossed Todd's fork a little above its mouth, and afterwards, in the year 1797.

Question by same. Where did you first hear of Todd's fork of the Little Miami by that name, or by the name of Todd's fork?

Answer. I think the first time I heard of Todd's fork was in the fall or winter of 1787, after the land office was opened.

Question by same. What were the nearest settlements to the mouth of Todd's fork in the month of August, 1787? and when were those settlements respectively formed?

Answer. I do not know of any settlements nearer than Limestone, and in its neighborhood there was Kenton station, Warren's station; Kenton station was about two and one-half miles from Limestone, Warren's about one and a half miles, Lee's station about four miles, and Clark's station about six miles. These settlements were made in the year 1785.

Question by same. Were you engaged in locating lands in Kentucky, or in the district of country between the Sciota and Little Miami, on the northwest side of the Ohio, in August, 1787, or earlier than that period?

Answer. I was not at that period engaged in locating.

Question by same. Were you acquainted and in habits of intimacy with any of the surveyors and locators who were engaged in surveying and locating lands in the district of country between the Sciota and Little Miami rivers in August, 1787, and prior to that time? if you were, name them.

Answer. I was in habits of intimacy with Nathaniel Massie, Arthur Fox, John O'Bannan, and Robert Todd, who were engaged in surveying and locating lands in that section of country after the office was opened in August, 1787, and who were in habits of exploring that section of country prior to the office being opened.

Question by same. At what place did locators and surveyors, who were engaged exploring the country, or in locating and surveying lands in the military district between the Sciota and Little Miami, usually cross the Ohio river when going to and returning from that district in the year 1787, and previous to that time?

Answer. I believe the most of them crossed at Limestone.

Question by same. Where did the locators and surveyors mentioned in the last question usually resort upon their first crossing the river Ohio, when returning from the military district in the year 1787, and previous to that time?

Answer. They usually crossed at Limestone; Nathaniel Massie frequently came to Lee's station; the rest, I supposed, pursued their way home.

Question by same. Were the inhabitants of Limestone, Washington, Kenton's station, Lee's station, and other inhabited parts of the country, in the habit, very frequently, of pursuing the Indians, and scouting and hunting in the military district between the Sciota and Little Miami rivers, as early as the first of August, 1787, and prior to that time?

Answer. Yes; they frequently pursued the Indians, and some went over to hunt.

Question by same. Were there any persons in this section of the country who were frequently employed previous to August, 1787, by the explorers, surveyors, and locators, who were engaged in the military district aforesaid as chain carriers, hunters, and guides? if so, who were they, and where did did they reside?

Answer. I recollect Jeremiah Washburn was employed by Arthur Fox, but he is dead; there were others, but I do not recollect who they were.

And further saith not.

PETER LEE.

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And the said Henry Lee, aged about sixty-eight years, being also first duly sworn and cautioned by me to depose and testify the whole truth, doth thereupon testify and depose, and says as follows, to wit:

Question by defendants. When and where did you first settle in the western country?

Answer. I came to Kentucky in 1779, the first time, and settled in this neighborhood in 1785, where I now live and have ever since lived, which is about four miles from Limestone.

Question by same. Are you acquainted with a branch of the Little Miami river, in the State of Ohio, now called Todd's fork, or with the situation of the country about the mouth of that branch?

Answer. I am not.

Question by same. When did you first hear of Todd's fork of the Little Miami by that name, or by the name of Todd's fork?

Answer. I do not perfectly recollect what year, but I think it was since 1787, or in the latter part of that year.

Question by same. What were the nearest settlements to the mouth of Todd's fork in the month of August, 1787? and when were those settlements respectively formed?

Answer. Limestone was the nearest that I know of; Warren's station about one mile and a half or two miles from Limestone, Kenton's station about two and a half or three miles, Washington about four miles, Lee's station about four miles, Clark's station about five and one-half miles; all the distances are from Limestone. I think the mouth of Todd's fork is between fifty and sixty miles from Limestone.

Question by same. Were you engaged in locating lands in Kentucky, or in the district of country between the Scioto and Little Miami, on the northwest side of the Ohio, in August, 1787, or earlier than that period?

Answer. I was in Kentucky, but not over the Ohio.

Question by same. Were you acquainted and in habits of intimacy with any of the surveyors and locators who were engaged in surveying and locating lands in the district of country between the Scioto and Little Miami rivers in August, 1787, and prior to that time? if you were, mention them.

Answer. I was acquainted with Arthur Fox, Nathaniel Massie, John O'Bannan, and Robert Todd, who were engaged in locating and surveying lands in that district of country: Fox and Massie I was in the habits of intimacy; they located and surveyed after the office was opened in 1787.

Question by same. At what place did the locators and surveyors who were engaged in exploring the country, or in locating and surveying land in the military district between the Scioto and Miami, usually cross the Ohio river, when going to and returning from that district in the year 1787, and previous to that time?

Answer. The aforementioned Arthur Fox and Nathaniel Massie crossed at Limestone; O'Bannan sometimes crossed there.

Question by same. Where did the locators and surveyors mentioned in the last question usually resort upon their first crossing the river, when returning from the military district, in the year 1787, and previous to that time?

Answer. Nathaniel Massie generally came to my station; Arthur Fox, I suppose, came home, he lived in this place; the others, I suppose, went home, they did not reside in this section of the country.

Question by same. Were the inhabitants of Limestone, Washington,

Lee's station, Kenton's station, and other inhabited parts of this country, in the habit very frequently of pursuing the Indians, and scouting and hunting in the military district between the Scioto and Little Miami, as early as the first part of August, 1787, and previous to that time?

Answer. They were, previous and after that time.

Question by same. Were there any persons in this section of country who were frequently employed, previous to August, 1787, by the explorers, surveyors, and locators who were engaged in the military district aforesaid as chain carriers, hunters, and guides? if so, who were they, and where did they reside?

Answer. Jeremiah Washburn, and his three sons, Cornelius, Joseph, and Nicholas Washburn, I understood, were frequently employed by Arthur Fox to assist him in surveying in that district; this I understood from said Fox and the Washburns; several years ago the said Washburn removed to the State of Ohio.

Question by same. Do you know the year Kenedie's Bottom was settled, and when it was broken up; when Major Bailey was killed, and Quick's family were taken prisoners by the Indians?

Answer. I think the settlement was commenced in the fall of the year 1789, was broke up in the spring 1790; Bailey was killed, and Quick's family, I understood, were taken prisoners at that time. And further saith not.

H. LEE.

And the said John Kenton, aged about sixty-six years, being also first duly sworn and cautioned by me to depose and testify the whole truth, doth thereupon testify and depose, and says as follows, to wit:

Question by defendants. When and where did you first settle in the western country?

Answer. In the latter end of the year 1780, and settled about six miles west of Danville, in Kentucky; I settled a station in this county in February, 1785, moved to and settled about six miles from Limestone landing, on the Ohio river, where I have resided ever since.

Question by same. Are you acquainted with a branch of the Little Miami river, in the State of Ohio, now called Todd's fork, or with the section of country about the mouth of that branch?

Answer. I crossed the waters of Todd's fork, I think, in April, 1799, I never was at its mouth, nor don't know the situation of the country about its mouth.

Question by same. When did you first hear of Todd's fork of Little Miami by that name, or by the name of Todd's fork?

Answer. I suppose I have seen it in the military entry book in the year 1788 or 1789; the first positive recollection I have of it was in the year 1799.

Question by same. What were the nearest settlements to the mouth of Todd's fork in the month of August, 1787? and when were those settlements respectively formed?

Answer. Limestone was the nearest; Warren's station was then settled about one and one-half miles from Limestone, Simon Kenton's station about two and one-half from same, Washington about four miles from same, Lee's station about four miles from same, Clark's station about six miles from same, and John Kenton's about six miles from same; the principal part of these settlements were made in the year 1785.

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Question by same. Were you engaged in locating lands in Kentucky, or in the district of country between the Scioto and Little Miami, on the northwest side of the Ohio river, in August, 1787, or earlier than that period?

Answer. I did locate lands in Kentucky, but had nothing to do with lands on that side of the river.

Question by same. Were you acquainted and in habits of intimacy with any of the surveyors and locators who were engaged in surveying and locating lands in the district of country between the Scioto and Little Miami rivers, in August, 1787, and prior to that time? if you were, name them.

Answer. Arthur Fox located some, Nath. Massie located some, and Simon Kenton located some, and John O'Bannan located some, in that district; I was in the habits of intimacy with them all.

Question by same. At what place did the locators and surveyors who were engaged in exploring the country, or in locating and surveying land in the military district between the Scioto and Miami, usually cross the river Ohio when going to or returning from that district, in the year 1787, and previous to that time?

Answer. All the explorers that I know Limestone; some explored that section of country in 1786, during Logan's campaign, all of which crossed at Limestone.

Question by same. Where did the locators and surveyors mentioned in the last question usually resort upon their first crossing the river, when returning from the military district, in the year 1787, and prior to that time?

Answer. I do not know; I had nothing to do with it.

Question by same. Were the inhabitants of Limestone, Washington, Lee's station, Kenton's station, and other inhabited parts of this country, in the habit very frequently of pursuing the Indians, and scouting and hunting in the military district between the Scioto and Little Miami as early as the first of August, 1787, and prior to that time?

Answer. They were often pursuing Indians, and some went to hunt from the fall 1785, and after 1787.

Question by same. Were there any persons in this section of country, who were frequently employed, previous to August, 1787, by the explorers, surveyors, and locators, who were engaged in the military district aforesaid as chain carriers, hunters and guides? if so, who were they, and where did they reside?

Answer. I don't know of any prior to 1787.

Question by same. Do you know the year Kenedie's Bottom was settled, and when it was broken up; when Major Bailey was killed, and Quick's family were taken prisoners by the Indians?

Answer. It was settled some time in 1789, and was broke up in the spring 1790, when Major Bailey was killed, and Quick's family were taken prisoners.

JOHN KENTON.

Then adjourned until to-morrow morning, ten o'clock.

JAMES ELLIS.

Wednesday, 21st December, 1825. And the said John Pickett, aged about sixty-two years, being also first duly sworn and cautioned by me to depose and testify the whole truth, doth therefore testify and depose, and says as follows, to wit:

Question by defendants. When and where did you first settle in the western country?

Answer. In the neighborhood of Lexington, in Kentucky, in the winter 1785, and moved to this county, now Mason county, in the year 1788, and settled in Washington, about four miles from Limestone, and have resided in this county ever since.

Question by same. Are you acquainted with a branch of the Little Miami river, in the State of Ohio, now called Todd's fork, or with the section of country about the mouth of that branch?

Answer. I am not.

Question by same. What were the nearest settlements to the mouth of Todd's fork in the month of August, 1787? and when were these settlements respectively formed?

Answer. I believe Limestone was the nearest settlement; Warren's station one and half miles from Limestone, Simon Kenton's station about three miles from the same, Washington about four miles from the same, Lee's station about four miles from same, John Kenton's station about six miles from same; all these places were settled in the year 1785, or in that year I seen all them places.

Question by same. Were you engaged locating land in Kentucky, or in the district of country between the Scioto and Little Miami rivers, on the northwest side of the Ohio river, in August, 1787, or earlier than that period?

Answer. I never had any thing to do with locating lands any where.

Question by same. Were you acquainted and in habits of intimacy with any of the surveyors and locators who were engaged in surveying and locating in the district of country between the Scioto and Little Miami rivers, in August, 1787, and prior to that time? if you were, name them.

Answer. I was very well acquainted with Nathaniel Massie, John O'Bannan, Robert Todd, and a man by the name Conley, his given name I do not recollect, all of whom were engaged in locating and surveying lands in that district.

Question by same. At what place did the locators and surveyors who were engaged exploring the country, or in locating and surveying lands in the military district between the Scioto and Little Miami, usually cross the river Ohio when going to and returning from that district, in the year 1787, and previous to that time?

Answer. The general crossing place at that time, and previous, was at Limestone.

Question by same. Where did the locators and surveyors mentioned in the last question usually resort upon their first crossing the river Ohio, when returning from the military district, in the year 1787, and prior to that time?

Answer. Generally at Limestone and Washington, and frequently at Lee's station.

Question by same. Were the inhabitants Limestone, Washington, Lee's station, Kenton's station, and other inhabited parts of this country, in the habit very frequently of pursuing the Indians, and scouting and hunting in the military district between the Scioto and Little Miami, as early as the first part of August 1787, and prior to that time?

Answer. They were.

Question by same. Were there any persons in this section of country

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who were frequently employed, previous to August, 1787, by the explorers, surveyors, and locators who were engaged in the military district aforesaid as chain carriers, hunters and guides? if so, who were they, and where did they reside?

Answer. The Washburns and James Ireland; the Washburns resided, at that time, in this county, and I understood they moved to the State of Ohio some years ago; James Ireland resided, I think, about Kenton's or Whealy's station, about six or seven miles from Limestone; there were others, but at this time I do not recollect who they were.

Question by same. When did you first hear of Todd's fork of the Little Miami by that name, or by the name of Todd's fork?

Answer. Not earlier than the year 1790, at which time I boarded with Arthur Fox; and further saith not.

JOHN PICKETT.

STATE OF KENTUCKY, *Mason county, sct.*

At the house of James Artus, in the town of Washington, and county and State aforesaid, on the twentieth and twenty-first days of December, in the year 1825, before me, one of the justices of the peace, and also one of the judges of the county court in and for the county and State aforesaid, personally came the above named Peter Lee, Henry Lee, John Kenton, and John Pickett, all of the county and State aforesaid, and did subscribe the foregoing depositions given by them respectively, after the same was reduced to writing by me; and I further certify that I am not of counsel or attorney to either of the parties, or interested in the event of this cause, and that I caused notice to be served on Thomas Scott, Esq., attorney for the complainant, of the time and place of taking the foregoing depositions, a duplicate of which notice is hereto annexed in my own handwriting. In testimony whereof, I have hereunto set my hand and seal, this 21st day of December, 1825.

JAS. ELLIS. [SEAL.]

STATE OF KENTUCKY, *Mason county, sct.*

I, Marshall Key, clerk of the county court for said county, certify that James Ellis, Esq., before whom the foregoing depositions were taken, is, and was, at the time of taking the same, a justice of the peace acting in and for the said county, duly commissioned and qualified, and by virtue of said commission is a judge of the county court of said county, and that full faith and credit ought to be given to all his official acts by him done.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said county, at Washington, the 21st day of December, 1825.

MARSHALL KEY. [L. S.]

United States' 7th circuit court, Ohio district.

JAMES MCDONALD, *complainant,*
versus
JAMES GALLOWAY, jr., and others, *defendants.* } *In chancery.*

The defendants, or James A. Paxton, Esq., their counsel, will take notice, that, pursuant to the act of Congress in such case made and provided, the complainant will, on Tuesday, the 18th day of October, 1825, between 9 o'clock in the morning and 6 o'clock in the evening, (and continue to attend from day to day until the whole shall be finished,) at the house of

James Artus, innkeeper, in the town of Washington, Kentucky, take the deposition of Alexander D. Orr, of Mason county, Ky., and others, before the undersigned, a justice of the peace, and one of the judges of the court of the county of Mason, Kentucky, and the same will be read in evidence on the trial of the above cause.

JAMES ELLIS,
A justice of the peace for Mason county, and a judge of the county court of said county.

Service of the within notice was made on the within named James A. Paxton, by leaving a copy of it at his lodgings in Washington, Kentucky, on the 17th October, 1825, by

R. KIRCHEVAL.

THE UNITED STATES OF AMERICA, STATE OF KENTUCKY, ss.

The deposition of Simon Kenton, taken before the undersigned, a justice of the peace, and a judge of the county court for the county of Mason, and State aforesaid, duly appointed under the great seal of said State, and sworn, and by law was authorized and empowered to take depositions, and to be read in evidence in an action in chancery depending in the United States' seventh circuit court for the Ohio district, wherein James McDonald is complainant, and James Galloway, junior, and others, are defendants, taken on the part of the complainant in said suit, on the 18th day of October, 1825, at the house of James Artus, in the town of Washington, in the county and State aforesaid, and being of lawful age was by me first duly sworn and cautioned to depose and testify the whole truth, who thereupon doth testify, depose, and say, as follows, to wit:

Question by complainant. When did you first become acquainted with Cæsar's creek, a large creek which runs into the Little Miami river on its east side, and how long have you known it by that name?

Answer. I first became acquainted personally with it in the year 1778, but had heard it previously spoken of and described by Col. Daniel Boone and Andrew Johnston.

Question by same. Is or is not Cæsar's creek the first large creek above Todd's fork, and the second large creek above the East fork of the Little Miami?

Answer. It is.

Question by same. Was or was not Cæsar's creek generally and notoriously known to Clark's army in 1782, and to Logan's army in 1786?

Answer. Clark's army crossed it near its mouth, and Logan's army crossed it some distance above its mouth, and to a number in each of those armies the creek was well known by the name of Cæsar's creek.

Question by same. How far is the mouth of Cæsar's creek above the mouth of Todd's fork? and is or is not Todd's fork the first large creek below the mouth of Cæsar's creek?

Answer. I judge it to be about ten miles, and I know of no other large creek between Cæsar's creek and Todd's fork emptying into the Little Miami on its east side.

Question by same. Could you, in the latter part of the year 1786 or fore part of the year 1787, have directed with certainty a surveyor or any other person to Cæsar's creek from any the settlements in Kentucky, by giving such a description of the country that they or any good woodsman could have readily found it?

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Answer. I certainly could have done so, as there was a plain road which was used by Clark's artillery in 1780 and in 1782, which led from nearly opposite the mouth of Licking, crossing the Little Miami river a short distance below the mouth of Cæsar's creek, which continued to the said creek, and crossed it near its mouth.

Question by same. When at Cæsar's creek, and having a knowledge of that country and stream, could you or any surveyor or other person, on the 21st August, 1787, by having Captain John Payton Harrison's entry, which reads as follows, to wit, August 21st, 1787, No. 1494, Captain John Payton Harrison enters 4000 acres of land on a military warrant, No. 171, on the Miami, beginning at the mouth of Todd's creek, which empties into the Miami about ten miles below the mouth of Cæsar's creek; at the mouth of said creek, on the upper side, is a honey locust marked M, another W E, and a sugar tree No. 3, running up the river 640 poles, when reduced to a straight line; thence at right angles from the general course of the river easterly, for quantity, have readily gone to and found Todd's fork, being, as it is, only ten miles down the Little Miami below the mouth of Cæsar's creek?

Answer. I could; and any common woodsman also could.

Question by same. On the 21st August, 1787, could or could not any man of common understanding, by making reasonable search and inquiry at Col. Richard C. Anderson's office, have distinctly ascertained the fact, that a large branch of the Little Miami river was called and known by the name of Todd's fork or Todd's creek; and could or could he not have then and there *have* further acquired such a knowledge of the local situation of said stream as would have enabled him, with certainty, to have gone to said creek or fork at that time?

Answer. No man at that period could have found it without Anderson had produced that entry; and upon the production of that entry any man of common understanding could have found it.

Question by same. As early as the 21st August, 1787, did strangers who held Virginia military land warrants venture into the wilderness to make locations themselves, or was it their practice to apply to some experienced locator to do it for them?

Answer. They were in the habit of getting people to locate their warrants.

Question by same. Who were the persons that made the principal part of the entries in the Virginia military district at Richard C. Anderson's office for many years after it was opened on the 1st August, 1787?

Answer. John Hardin, John O'Bannan, and myself, together with Robert Todd, Nathaniel Massie, and Arthur Fox, were all that I knew of.

Question by same. Did or did not these persons do business in the above line, separate and distinct from each other?

Answer. They did, except Hardin; O'Bannan and myself were in partnership.

Question by same. In describing the larger tributary streams of rivers, is or is it not customary sometimes to call the same stream a *fork*, and at other times a *creek?*

Answer. I have often known it; I have known Johnson's fork called Johnson's fork and Johnson's creek, and Hinkston's fork *and* Hinkston's creek, and Stround's fork called Stround's creek.

Question by same. Are either Robert Todd, Nathaniel Massie, John O'Bannan, or John Hardin, now living?

Answer. I believe they are all dead.

Question by the defendants' counsel. Did you ever hear the interrogatories which you have answered above, read, until they were put to you in the presence of the justice officiating in taking your deposition? and if you did, did you answer them, or were answers to them written down at the time you heard them read?

Answer. I did hear those interrogatories read, and answers to them were put down at my request last night, and not in the presence of the magistrate now officiating; and the interrogatories intended to be put were also written at my request by the complainant's agent.

Memorandum.—That the counsel for the defendant objected to this deposition, on the ground that the examination of the witness on the part of the complainant had taken place in effect before he was brought before the officiating justice to give his deposition; and that the questions put to him on this occasion had been answered, and the answers written down in substance, as written in this deposition, except the answers to the six last interrogatories, which were not taken, as those were which preceded, substantially from the paper written by the complainant's agent before the examination of the witness commenced before me; which objections certified and signed at the request of the defendants' counsel.

JAMES ELLIS.

Question by defendants' counsel. When did you first know Todd's fork of the Little Miami by the name of Todd's fork?

Answer. The first time of my knowing it by that name was the second time that Anderson's office was opened, which I think was in 1790.

Question by same. Had you, at any time in the year 1787, ever heard any watercourses, on the northwest side of the Ohio river, called by the name of Todd's fork?

Answer. I had not.

Question by same. What were the nearest inhabited places in August, 1787, to the mouth of which is now called Todd's fork?

Answer. Limestone, on the Ohio river, and Washington's and Warren's stations, Lee's station, Kenton's station, Holme's station, and John Kenton's station, all in Mason county, Kentucky.

Question by same. Did you reside at Kenton's station in August, 1787? and was there any person resident at either of the places mentioned in your last answer, at all conversant with the country on the Little Miami, about the mouth of what is now called Todd's fork, except yourself?

Answer. I did reside there at the time mentioned; and there was no person resident at either of the places mentioned in my last answer, that I know of, but myself, at all acquainted with the country about Todd's fork.

Question by same. Is there any creek emptying into the Little Miami, on either side, between Cæsar's creek and what is now called Todd's fork? if so, describe its size, and state the name of it or them, if there is more than one.

Answer. I do not know of any.

Question by complainant. Where were the men principally collected from, who composed the three armies you have spoken of in this deposition?

Answer. The two armies commanded by Clark; a part was regular troops,

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the balance were volunteers from different parts of Kentucky; the army commanded by Logan were all volunteers, from different parts of Kentucky.

And further this deponent saith not.

SIMON KENTON.

Also, the deposition of Col. Alexander D. Orr, taken at the same time and place, and for the same purpose, as the foregoing deposition of Simon Kenton. This deponent, aged about sixty-one years, and first duly sworn, deposeth and saith, in answer to interrogatories:

Question by complainant. Were you acquainted with Robert Todd, Nathaniel Massie, John O'Bannan, and John Hardin, as early as the year 1786?

Answer. I was.

Question by complainant. Did or did not the above named gentlemen, with some others, form a party which went from Kentucky to explore the country lying on the east side of the Little Miami river, previous to the opening of Richard C. Anderson's office on the first of August, 1787?

Answer. The above named gentlemen did, as I believe, and understood at the time, go to the country lying between the Little Miami and Scioto rivers, for the purpose of exploring the country; I think they left Lexington or its neighborhood about February or March, 1787. General Massie at that time lived with me as a boarder, in the house of Rawleigh Chinn, near Lexington; and the party, I think, returned about the latter end of April or the first of May, 1787.

Question by same. Did or did you see all or either of the above named gentlemen in Kentucky, after their return, and previous to the opening of Anderson's office on 1 Aug., 1787?

Answer. I did see Nathaniel Massie, Robert Todd, and, I believe, John Hardin, and John O'Bannan, at Lexington, and other places, previous to the meeting at or opening of Anderson's office in Aug. 1787.

Question by same. At what time did you first obtain a knowledge of the stream called Todd's fork of the Little Miami river? and by what means did you become acquainted with it?

Answer. Nathaniel Massie and myself, as I have already stated, lived at the house of Rawleigh Chinn, near Lexington, as boarders, when said Massie went on this exploring expedition; on his, the said Massie's, return from this examination of the country, he freely communicated me and others of his friends, boarders at the same house, and did show to me a rough draught or sketch of the country by him explored, and on which draught were marked and traced various creeks emptying into the Little Miami on the east side. Amongst the creeks thus marked and laid down, was Todd's fork.

Question by same. From the knowledge which you acquired from Nathaniel Massie of the stream called Todd's fork, could you, with certainty, have gone to it yourself, and could you have, with equal certainty, directed a surveyor, or any other person, to it, from any of the settlements of Kentucky, on the 21st Aug., 1787?

Answer. I think I could have found Todd's fork of the Little Miami from the information which I had of Gen. Massie, and particularly from the map or sketch shown me by said Massie, on which said fork or creek was laid down, and, of course, that I could have directed any other person to have found the same. I cannot say certainly I could have done so, but this

is my belief; and it may not be improper to add that I had the same information from Robert Todd and others.

Question by same. Were you at and in company with the above named explorers, at Rich. C. Anderson's office, at the time it was first opened for making locations within the Virginia military district, on 1 Aug., 1787?

Answer. I was, and went there in company with Gen. Massie and others.

Question by same. Was or was not the stream called Todd's fork of the Little Miami generally known by that name to the locators and others attending at Anderson's office on business on the 1 Aug., 1787?

Answer. The stream called Todd's fork was spoken of frequently by the locators at Col. Anderson's office in Aug., 1787; and this deponent, who was not a locator, heard the said fork frequently spoken of.

A. D. ORR.

STATE OF KENTUCKY, *county of Mason, ss.*

At the house of James Artus, in said county, on the 18 day of Oct., 1825, before me, a justice of the peace, and one of the judges of the county court of Mason, and State aforesaid, personally came Simon Kenton, of Logan county, State of Ohio, and Alexander D. Orr, of Mason county, Kentucky, and after being carefully examined, cautioned, and sworn, to testify the whole truth, did subscribe the aforegoing depositions or testimony after the same, to wit, Simon Kenton's being reduced to writing by me, and Alexander D. Orr's being reduced to writing by himself in my presence. And I certify that the deponent, Simon Kenton, is an aged and infirm man, and that the deponent, Alexander D. Orr, resides more than one hundred miles from the place of trial, which are the causes of taking these depositions; that I am not of counsel or attorney to either of the parties, nor interested in the event of this cause. The adverse party having been duly notified of the time and place of taking these depositions, did attend by his counsel. In testimony whereof, I have hereunto set my hand, the day and year above written.

JAS. ELLIS, *J. P.*,
And one of the judges of the county court of Mason county.

STATE OF KENTUCKY, *Mason county, sct.*

I, Marshall Key, clerk of the county court of said county, certify that James Ellis, Esquire, before whom the foregoing depositions were taken, subscribed, and sworn to, is, and was at the time of so doing, a justice of the peace, and one of the judges of the county court of said county, which is a court of record, duly commissioned and qualified, and as such is entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said county, at Washington, this 18th day of October, 1825.

MARSHALL KEY. [L. S.]

THE UNITED STATES OF AMERICA, *State of Kentucky, sct.*

The deposition of John Parker, taken before me, John Bradford, the undersigned, one of the justices of the peace in and for the commonwealth of Kentucky, and county of Fayette, being by virtue of my commission one of the justices of the county court in and for the county aforesaid, duly commissioned, sworn, and acting as such, taken on this 8th day of Oct., in the

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year 1825, at my office, in the county aforesaid, to be read as evidence in a certain suit depending in the court of the United States in and for the 7 circuit and district of Ohio, holden in Columbus, wherein James McDonald is complainant, and Richard Cast, and others, are defendants. The said deponent, being first duly sworn and cautioned to depose the whole truth, doth depose and say, that he resides in the county of Fayette aforesaid, and more than one hundred miles from Columbus aforesaid; furthermore, he saith, in answer to interrogatories, as follows:

Question by Thomas Austin, one of the defendants. Do you know that a company of locators, consisting of Robert Todd, John O'Bannan, Nathaniel Massie, and others, went from Lexington, Kentucky, to explore the lands in the Virginia military district northwest of the Ohio, in the 1787?

Answer. Todd, O'Bannan, and Massie, left my house in Lexington some time in the latter part of the year 1786, or beginning of the year 1787, with others; and several of them returned a few weeks after to this place.

Question by same. At what time did they set out to go to R. C. Anderson's office, to make their entries in said district?

Answer. I do not know.

Question by same. Did you learn from them that they named a branch of the Little Miami Todd's fork, while on that expedition?

Answer. I did.

Question by same. Did you learn this from more than one of said company, that they had named a branch of the Little Miami by that name?

Answer. I learned it from more than one, and, in particular, from examining their journal, on which the name was entered.

Question by same. Was not Robert Todd, who was one of the said company, a brother-in-law of yours, and were you not on friendly and intimate terms?

Answer. Yes.

Question by same. Did you not believe that, in consequence of this intimacy, he communicated more freely to you than to most others the discoveries and memorandums he made while on this expedition?

Answer. I think it very probable he did.

Question by same. Was not the said Robert Todd, about the time of his return from the said expedition, said to be courting a sister of Gen. William *Little's*, now living in Cincinnati? and was he not, shortly after, married to her?

Answer. About the time of courtship, or of the time he married, I do not recollect, but he did marry Gen. *Lyle's* sister.

Question by same. Are you certain that you were informed by Todd, or any of the said company, that the stream now called Todd's fork was by them named Todd's fork, or did they name it Todd's creek?

Answer. To the best of my recollection, the minute book called it Todd's fork.

Question by same. Do you know that Todd's fork, prior to the 24th Aug., 1787, was generally known by that name at Washington, Kentucky, Limestone, Lee's station, and Fleming's station?

Answer. I do not know how far it was known by that name.

Question by same. Do you know that it was generally known by the name of Todd's fork to the people of Lexington and its vicinity prior to the 24th of Aug., 1787?

Answer. I never heard it named, that I recollect, by any but the exploring party prior to that date.

Question. Was it not a common practice, so far as you know, for locators and surveyors in Kentucky, at that time, to keep secret any discoveries of valuable vacant lands which they might have made until after they had located them? or if, in any instance, they imparted such information, was it not only to their most intimate friends?

Answer. I suppose the locators of Kentucky generally kept their own secrets.

Question by same. Do you know that Todd, Massie, O'Bannan, Hardin, and others, who were of said company of locators, gave frequent and particular information of the country watered by the Little Miami, between it and the Scioto, to persons whom they might converse with at the stations or settlements through which they returned from the said exploring tour?

Answer. I know of no information given to any other person than myself; they gave me the information in consequence of a promise that they would look me out a place before they left my house.

Question by same. Do you know when said party crossed the Ohio river on their return from said tour, and what crossing place was mostly used prior to August, 1787, by persons going from Lexington to travel through the Virginia military district aforesaid, or in returning to Lexington from that country?

Answer. I do not know, but suppose it was at Limestone, which was, at that time, the general crossing place to the upper part of the military district.

Question by same. Was it a common custom in Kentucky, prior to August, 1787, to call the same streams by the name of fork and creek, indiscriminately? for instance, was Floyd's fork, Johnson's fork of Licking, the Rolling fork, the North fork of Licking, &c., as often called Floyd's creek, Johnson's creek, Rolling creek, as the names first mentioned, or were they ever known generally by the latter names?

Answer. I believe that the principal names of watercourses above named were then the same that they now are called by, that is, forks.

And further this deponent saith not.

JNO. PARKER.

I, John Bradford, one of the justices of the peace in and for the county of Fayette aforesaid, in the State of Kentucky, duly commissioned, sworn, and acting as such, and, by virtue of my said commission, being one of the judges of the county court in and for said county, do certify, that, at the request of the defendants in said suit, I caused the deponent in the foregoing to come before me, at the time and place stated in the caption, because the said witness resides more than one hundred miles from Columbus, the place of holding the said court of the United States; that I did not cause any notification to be given to the adverse party of the time and place, so as to be present at the taking of the same, because the said adverse party did not reside within one hundred miles of taking the same, and no agent or attorney within that distance of the said place of caption. The said witness was by me carefully examined, cautioned, and sworn, then and there to testify the whole truth; the said deposition was wholly reduced to writing by me, in the presence of the said witness then and there, and subscribed by him in my presence; that I am not of counsel or attorney to either of the parties,

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or interested in the event of the cause. All which I do certify to the said court as the cause and manner wherefore the said deposition is taken.

Given under my hand the date above mentioned.

JOHN BRADFORD, *J. P. F. C.*

STATE OF KENTUCKY, *Fayette county, to wit:*

8th, 1825. I, James C. Rodes, clerk of the court in and for the county aforesaid, do certify that John Bradford, before whom the foregoing deposition of John Parker was taken, is at this time, and was at the time of taking the same, an acting justice of the peace in and for the county aforesaid, duly appointed, commissioned, and qualified agreeable to law, and, as such, full faith and credit should be given to all his official acts, as well within as without courts of justice.

In testimony whereof, I have hereunto set my hand, and affixed my seal, office, this day and date above written, and of the Commonwealth the 34th year.

Attest: J. C. RODES, *Clerk.* [L. S.]

Fayette county, sct.

I, Edward Payne, the presiding magistrate of the court in and for the county aforesaid, do certify that James C. Rodes, whose name is signed to the foregoing certificate, is at this time, and was at the time, the clerk of the court in and for the county aforesaid, duly appointed and qualified agreeably to law, that his certificate is in due form of law, and, as such, full faith and credit should be given to all his official acts.

Given under my hand, this 8th day of October, 1825.

EDWARD PAYNE, *P. J. P. F. C.*

United States of America, 7th circuit court, Ohio district.

JAMES MCDONALD, *complainant,*
versus
RICHARD CAST, JAMES GALLOWAY, jr., and others, *defendants.* } *In chan'ry.*

The complainant, or Thomas Scott, his attorney, will take notice, that, pursuant to the act of Congress in such case made and provided, the defendants will, between the hours of six o'clock in the morning and six o'clock in the evening, on Wednesday, the 5th day of October next, at the clerk's office, in the town of Xenia, in the county of Greene, and State of Ohio, take the deposition of Benjamin Whiteman, an aged and infirm man, and others, before the undersigned, one of the associate judges of the court of common pleas within and for the county of Greene, and State of Ohio, and that the same will be used on the trial of the above cause, now depending and undetermined in the United States' seventh circuit court, Ohio district.

SAMUEL KYLE, *Associate Judge*
in and for the county of Greene, and State of Ohio.

Greene county, September 24th, 1825, September 29th, 1825, Mr. Walter Dunn served me with a copy of the foregoing notice.

THOMAS SCOTT.

The above interlineation was made to make it correspond with the copy.

THE UNITED STATES OF AMERICA, *State of Ohio, ss.*

The deposition of Benjamin Whiteman, taken before me, the undersigned, an associate judge of the court of common pleas in and for the county of Greene, and State aforesaid, duly appointed under the great seal of the State of Ohio, and sworn, and by law authorized and empowered to take depositions, and to be read as evidence in an action depending in the United States' seventh circuit court for Ohio district, wherein James McDonald is plaintiff, and Richard Cast, Jas. Galloway, jr., and others, are defendants, on the part of the defendants in said suit, on the 5th day of October, 1825, in the town of Xenia, county of Greene, and State aforesaid, and being of lawful age, was by me first duly sworn and cautioned to depose and testify the whole truth, who thereupon doth testify, and depose, and say, as follows, to wit:

Question by defendants. Where did you reside in the year one thousand seven hundred and eighty-seven?

Answer. In Washington, Mason county, Kentucky, from the year one thousand seven hundred and eighty-six to the year one thousand seven hundred and ninety-four, and in Mason county until the year one thousand seven hundred and ninety-nine.

Question by the same. Were you, in the year one thousand seven hundred and eighty-seven, and after that period, frequently on scouts, or in pursuit of Indians, in the country northwest of the Ohio river, and particularly on the Little Miami river, and on the waters emptying into said river on the east side thereof?

Answer. From the year one thousand seven hundred and eighty-seven until the year one thousand seven hundred and ninety-two, I was on frequent scouts northwest of the Ohio, between the Little Miami and Scioto rivers; I frequently crossed different branches of the Little Miami, in different directions, as far as Cæsar's creek, and across the country from Limestone to Paint creek, and to the mouth of Scioto.

Question by same. Who generally commanded the parties you were with, when in pursuit of Indians on the northwest side of the Ohio, at the times above mentioned?

Answer. Captain Simon Kenton, now known by the title of General Kenton.

Question by same. Did you know of a branch of the Little Miami called Todd's fork, and known and generally called by that name by the parties you were with on the northwest side of the Ohio river, prior to the twenty-fourth day of August, one thousand seven hundred and eighty-seven; and when did you first know the stream, since called Todd's fork, by that name?

Answer. I think the first time I heard that stream called Todd's fork, was in the year one thousand seven hundred and ninety.

Question by same. What were the nearest settlements to the stream now called Todd's fork, in the years 1787, 1788, and 1789? were you acquainted at those settlements during those years, and did you ever hear Todd's fork called by that name in those settlements during those years, and particularly in 1787?

Answer. In those years, Limestone, Simon Kenton's station, and Washington, all in Mason county; I was acquainted generally at those stations, in those years; I did not, as I recollect, hear that creek called by the name of Todd's fork during those years.

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Question by same. Was not Simon Kenton generally known in those settlements in 1787 and 1788, and from his habits of life? and frequent travels in the country northwest of the Ohio, and on the Little Miami waters, was he not generally believed to be as well or better acquainted with the Little Miami waters than any other white man then living in Kentucky?

Answer. He was generally known in those settlements in those years; and in my own opinion he was better acquainted with the Miami country than any other man in that part of Kentucky, and I believe it was generally thought so by those who scouted with him; and he was generally looked up to by them as having more knowledge of the country *that* any other of their party; our scouting parties were generally made up of men from Limestone, Washington, Simon and John Kenton's, and Lee's stations.

Question by same. At what place on the Ohio river did your scouting parties and others, in 1787, 1788, and 1789, most generally cross the said river, when going in pursuit of Indians, or exploring the country northwest of the Ohio river?

Answer. At Limestone, Kentucky.

Question by same. Is not Washington, Limestone, and Kenton's stations, in Kentucky, nearer to the mouth of Todd's fork than Lexington, in Kentucky, is? and please to state the difference in distance as near as you can by estimation.

Answer. Those places are nearer to the mouth of Todd's fork than Lexington, in Kentucky, is, by from forty to fifty miles.

Question by same. Was it customary in Kentucky, prior to August, 1787, and for some years after that time, to call the same streams or watercourses by the name of forks and creeks indiscriminately? for instance, was Floyd's fork of Salt river, Johnson's fork of Licking, the Rolling fork, the North fork of Licking, the North and South forks of Elkhorn, as often called Floyd's creek, Johnson's creek, Rolling creek, North creek, or South creek, as by the names first mentioned, or did you ever hear them called by the latter names?

Answer. I have most generally heard them called by the former names.

Question by complainant. How old was you at the time you first passed through the Miami country in 1787?

Answer. I was in my nineteenth year.

Question by same. What was your occupation before at the time you first passed through the Miami country?

Answer. My occupation was that of a tanner and currier, and was preparing for, but had not then commenced, the business.

Question by same. Had you any expectation, at that early day, that you would become a dealer in, or locator of, any of the lands of the Virginia military district; and was such an expectation the reason with you for passing through that country as early as 1787?

Answer. I had no such expectation, and it was not with that view.

Question by same. Were you acquainted with, and in the habit of associating with, Robert Todd, John O'Bannan, Nathaniel Massie, and John Hardin, as early as the latter part of the year 1786, or the fore part of the year 1787?

Answer. With Todd and Hardin I was not acquainted, and I do not know that I had an acquaintance with either Massie or O'Bannan at that time, but I recollect I was well acquainted with Massie and O'Bannan at the time Quick's family were taken from Kenedey's bottom, and Baily was killed

by the Indians; immediately after, hearing the news Massie and myself were messmates, when going with a party to bury the dead, under the command of Col. Harry Lee.

And further this deponent saith not.

BENJAMIN WHITEMAN.

STATE OF OHIO, *Greene county, ss.*

At the clerk's office, in the town of Xenia, in the county and State aforesaid, on the fifth day of October, one thousand eight hundred and twenty-five, between the hours of six o'clock in the forenoon and six o'clock in the afternoon of said day, before me, one of the associate judges of the court of common pleas within and for the county and State aforesaid, personally came the above named Benjamin Whiteman, of the county and State aforesaid, and did subscribe the foregoing deposition or testimony, after the same was reduced to writing by me; and I certify that said deponent is an aged and infirm man, which is the cause of taking this deposition; and that I am not of counsel or attorney to either of the parties, or interested in the event of this cause. The adverse party residing or being within one hundred miles of the place of taking this deposition, was notified of the time and place thereof, and did attend. In testimony whereof, I have hereunto set my hand, the day and year first above written.

SAMUEL KYLE,
Associate judge, Greene county, State of Ohio.

United States' seventh circuit court, Ohio district.

JAMES MCDONALD, *complainant,*
versus
JAMES GALLOWAY, jr., and others, *defendants.* } *In chancery.*

The defendants will take notice, that, pursuant to the act of Congress in such case made and provided, the complainant will, between 8 o'clock in the morning and 6 o'clock in the evening of Thursday, the 22d day of September next, take the deposition of Robert Patterson, an aged and infirm man, at the house of David Reid, in the town of Dayton, Ohio, before the undersigned, one of the associate judges of the court of common pleas within and for the county of Montgomery, and State of Ohio, and that the same will be used on the trial of the above cause.

JAMES STEELE, *One of the associate judges of the court of common pleas of the county of Montgomery, Ohio.*

DAYTON, *September 8th,* 1825.

We, the undersigned, acknowledge service of the within notice, agreeably to the terms of the agreement entered into on the 5th of September, 1825, this 14th day of September, 1825.

WILLIAM HADLEY.
JAMES HARRIS.

I acknowledge service of the within notice, September 21st, 1825.

JAMES GALLOWAY, JR.

THE UNITED STATES OF AMERICA, *State of Ohio, ss.*

The deposition of Robert Patterson, taken before the undersigned, an associate judge of the court of common pleas within and for the county of

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Montgomery, and State aforesaid, duly appointed under the great seal of the State, and sworn, and by law authorized and empowered to take depositions, and to be read as evidence in an action in chancery depending in the United States' seventh circuit court, for Ohio district, wherein James McDonald is complainant, James Galloway, jr., and others, are defendants, taken on the part of the complainant in said suit, on the 22d day of September, 1825, at Dayton, in the county and State aforesaid, and being of lawful age, was by me first duly sworn and cautioned to depose and testify the whole truth, who thereupon doth testify, depose, and say, as follows, to wit:

Question by the complainant. At what time did you first become acquainted with the waters of the Little Miami, which put into the east side of said river?

Answer. I became acquainted with the East fork of the Little Miami as early as the month of May, 1779; the army which was commanded by Col. Bannan, of Kentucky, encamped at its mouth at that time; it was, I believe, then first named, and has ever since been called by that name. I was captain, and commanded a company in Clark's campaign, in August, 1780. We set out from Kentucky, crossed the Ohio river where Cincinnati now stands, and proceeded through the country to the Little Miami river, which stream we crossed to its east side, above the mouth of Cæsar's creek, near to where Wainsville now stands, and ascended the river on its east side, to the mouth of what has since been called Massie's creek, and again crossed to the west side, and went to an Indian town on Mad river. In 1782, I was a colonel, and commanded a regiment in Clark's second army; we took nearly the same route to Indian Piqua, on the Big Miami. In 1786, I was a colonel, and commanded a regiment in Logan's army, and was the second officer in command; we crossed the Ohio river at Limestone, and proceeded up Eagle creek to the head waters of the East fork of the Little Miami, and encamped at Cæsar's encampment, which was, by some, called the Deserted Camp, on a branch of the stream now called Todd's fork, near to where the town of Wilmington now stands; thence to old Chillicothe, on the Little Miami river; and from thence to Mackachack, a branch of Mad river, and returned home by the same route. In 1787 or '8, I was a colonel, and commanded a regiment in Harmer and Scott's campaign, on the Scioto; we crossed the Ohio at Limestone, followed the trace of the army of 1786, about ten miles from the river, took up Eagle creek, and struck through the country to the falls of Paint creek, passed on to Old Chillicothe, on the north fork of Paint creek, and struck the Scioto 10 or 15 miles above where Chillicothe now stands, from which point we descended the river to its mouth.

Question by the same. Were either Nathaniel Massie, John O'Bannan William Lytle, or Robert Todd, with Logan's army in 1786?

Answer. I am certain that Massie and Lytle were, but I am not confiden about the others.

Question by the same. Were or were not Robert Todd, Nathaniel Massie, nd John O'Bannan, amongst the very first that explored the land in the Viginia military district, with a view of making locations there, previous to the 1st of August, 1787?

Answer. Yes.

Question by the same. Were or were you not very intimately acquain ed with the above named gentlemen, in Lexington, Kentucky, as early as the year 1786 or 1787; and did or did you not see them, on their return from

exploring the Virginia military district, and particularly that part of it which lies along the east side of the Little Miami river, in the fore part of the year 1787?

Answer. I was very intimately acquainted with them at that time; was in the habit of communicating with them, and they with me, on the subject of the lands lying within the Virginia military district, the several streams which pass through it, &c., after their return from exploring the country in the early or fore part of the year 1787.

Question by the same. Did or did they not inform you, after their return, in the fore part of the year 1787, from their exploring expedition, that the streams called O'Bannan's creek, Todd's fork, Massie's creek, (streams which empty into the Little Miami river, on the east side,) were named after them, the said O'Bannan, Todd, and Massie, respectively, on their exploring the country in the early part of the year 1787?

Answer. Yes; it is my impression that they did inform me that the streams above named were so called and named at that time, and by the above named persons.

Question by the same. Have you ever heard those streams, and particularly Todd's fork, called by any other name than the names which they then, in 1787, received, and now bear?

Answer. I have never heard them called by any other names than the names which they now bear, since I first heard them so called by the party which first named them, in the early part of the year 1787, and by every other person since, who was acquainted with said streams, and the country through which they passed.

Question by the same. Was or was not the stream which Logan's army encamped on, at Cæsar's encampment, in November, 1786, the same stream which was, in the early part of the following year, 1787, named by Robert Todd Todd's fork, and which has ever since been called and known by that name?

Answer. Yes, it is.

Question by same. From the description which was given you of the streams which empty into the Little Miami, on its east side, and particularly of that called Todd's fork, by Todd, Massie, and O'Bannan, after their return, in the fore part of the year 1787, from exploring the country extending along the Little Miami on its east side, could you, or any surveyor who was acquainted with the woods, have readily gone to those streams, and particularly to Todd's fork, at that time?

Answer. I have no doubt of it, and particularly to Todd's fork, as the very circumstance of its being called a fork, instead of a creek, would have held out the idea of its being a large body of water, that if it had have been called a creek, as for example, the north fork of Licking river, in Kentucky, would have been much easier known and found in the early settlements of the country, than Beaver creek, which puts into main Licking, not far from it.

Question by the same. Was or was not Todd's fork as notoriously known by that name, after Todd and his exploring party returned, in the fore part of the year 1787, to the different locating parties that were employed in the Virginia military district, to the hunters, and also to the war parties which pursued the hostile Indians to this side of the Ohio river, from the settlements in Kentucky, in the summer or fore part of the year 1787, as the East fork of the Little Miami, or Cæsar's creek?

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Answer. It was as well known, if not better known, than any other stream which puts into the Little Miami on its east side, above the East fork.

Question by the same. Did or did not Robert Todd, John O'Bannan, and Nathaniel Massie, after their return from exploring the country, and naming the streams along the east side of the Little Miami river, in the early part of the year 1787, form separate and distinct parties, each for himself, for the purpose of making entries and locations within the Virginia military district?

Answer. As far as I know, they did.

Question by the same. From the description of Todd's fork, or creek, as it is called in this instance, in John P. Harrison's entry No. 1494, dated August 21st, 1787, (here a copy of said entry was read to the deponent,) could *or could* you, or any surveyor or good woodsman, have easily have gone to said creek from the settlements at that time, and have made entries upon it?

Answer. I could have readily gone there then myself, and I think any good surveyor or woodsman could have done so too.

Question by the same. How early was you acquainted with Cæsar's creek?

Answer. As early as November, 1786; it was well known to Logan's army at that time.

Question by the same. How far is the mouth of Todd's fork below the mouth of Cæsar's creek; and is it the first large creek which puts into the Little Miami above the East fork?

Answer. It is 10 or 12 miles below the mouth of Cæsar's creek, and is the largest branch of the Little Miami, except the East fork.

Question by the same. Were there any white settlements as early as the spring of 1787, between the mouths of the Little Miami and Scioto rivers?

Answer. There were none.

Question by the same. Were there any settlements at Limestone and Washington, K., as early as the spring 1787?

Answer. Yes.

Question by the same. At what settled places, on the Ohio river, did the different parties cross, that passed to this side, as early as the spring of 1787?

Answer. Generally at Limestone.

Question by the same. Have you reason to believe that the country lying on the east side of the Little Miami river, the names of the streams which pass through it, &c., were not known to the people living at Limestone, Washington, and other settlements of the whites in Kentucky, as early as the summer or fore part of the year 1787?

Answer. I have no reason to believe that the country was not known at those places then; on the contrary, I think that it was known at those places then, as the different exploring parties passed through Limestone and Washington, on their return to the settlements in Kentucky.

Question by the same. Was or was not Todd, and the party that went over with him to explore the Miami country, in the spring of 1787, in the habit, on their return to the settlements, of freely describing the country in the conversation which they held with their friends and acquaintances generally?

Answer. They freely did it to me, and I believe that I got from them all the information which they had of that country; and I have no reason to believe but that they did so to others of their friends and acquaintances.

exploring the Virginia military district, and particularly that part of it which lies along the east side of the Little Miami river, in the fore part of the year 1787?

Answer. I was very intimately acquainted with them at that time; was in the habit of communicating with them, and they with me, on the subject of the lands lying within the Virginia military district, the several streams which pass through it, &c., after their return from exploring the country in the early or fore part of the year 1787.

Question by the same. Did or did they not inform you, after their return, in the fore part of the year 1787, from their exploring expedition, that the streams called O'Bannan's creek, Todd's fork, Massie's creek, (streams which empty into the Little Miami river, on the east side,) were named after them, the said O'Bannan, Todd, and Massie, respectively, on their exploring the country in the early part of the year 1787?

Answer. Yes; it is my impression that they did inform me that the streams above named were so called and named at that time, and by the above named persons.

Question by the same. Have you ever heard those streams, and particularly Todd's fork, called by any other name than the names which they then, in 1787, received, and now bear?

Answer. I have never heard them called by any other names than the names which they now bear, since I first heard them so called by the party which first named them, in the early part of the year 1787, and by every other person since, who was acquainted with said streams, and the country through which they passed.

Question by the same. Was or was not the stream which Logan's army encamped on, at Cæsar's encampment, in November, 1786, the same stream which was, in the early part of the following year, 1787, named by Robert Todd Todd's fork, and which has ever since been called and known by that name?

Answer. Yes, it is.

Question by same. From the description which was given you of the streams which empty into the Little Miami, on its east side, and particularly of that called Todd's fork, by Todd, Massie, and O'Bannan, after their return, in the fore part of the year 1787, from exploring the country extending along the Little Miami on its east side, could you, or any surveyor who was acquainted with the woods, have readily gone to those streams, and particularly to Todd's fork, at that time?

Answer. I have no doubt of it, and particularly to Todd's fork, as the very circumstance of its being called a fork, instead of a creek, would have held out the idea of its being a large body of water, that if it had have been called a creek, as for example, the north fork of Licking river, in Kentucky, would have been much easier known and found in the early settlements of the country, than Beaver creek, which puts into main Licking, not far from it.

Question by the same. Was or was not Todd's fork as notoriously known by that name, after Todd and his exploring party returned, in the fore part of the year 1787, to the different locating parties that were employed in the Virginia military district, to the hunters, and also to the war parties which pursued the hostile Indians to this side of the Ohio river, from the settlements in Kentucky, in the summer or fore part of the year 1787, as the East fork of the Little Miami, or Cæsar's creek?

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Answer. It was as well known, if not better known, than any other stream which puts into the Little Miami on its east side, above the East fork.

Question by the same. Did or did not Robert Todd, John O'Bannan, and Nathaniel Massie, after their return from exploring the country, and naming the streams along the east side of the Little Miami river, in the early part of the year 1787, form separate and distinct parties, each for himself, for the purpose of making entries and locations within the Virginia military district?

Answer. As far as I know, they did.

Question by the same. From the description of Todd's fork, or creek, as it is called in this instance, in John P. Harrison's entry No. 1494, dated August 21st, 1787, (here a copy of said entry was read to the deponent,) could *or could* you, or any surveyor or good woodsman, have easily have gone to said creek from the settlements at that time, and have made entries upon it?

Answer. I could have readily gone there then myself, and I think any good surveyor or woodsman could have done so too.

Question by the same. How early was you acquainted with Cæsar's creek?

Answer. As early as November, 1786; it was well known to Logan's army at that time.

Question by the same. How far is the mouth of Todd's fork below the mouth of Cæsar's creek; and is it the first large creek which puts into the Little Miami above the East fork?

Answer. It is 10 or 12 miles below the mouth of Cæsar's creek, and is the largest branch of the Little Miami, except the East fork.

Question by the same. Were there any white settlements as early as the spring of 1787, between the mouths of the Little Miami and Scioto rivers?

Answer. There were none.

Question by the same. Were there any settlements at Limestone and Washington, K., as early as the spring 1787?

Answer. Yes.

Question by the same. At what settled places, on the Ohio river, did the different parties cross, that passed to this side, as early as the spring of 1787?

Answer. Generally at Limestone.

Question by the same. Have you reason to believe that the country lying on the east side of the Little Miami river, the names of the streams which pass through it, &c., were not known to the people living at Limestone, Washington, and other settlements of the whites in Kentucky, as early as the summer or fore part of the year 1787?

Answer. I have no reason to believe that the country was not known at those places then; on the contrary, I think that it was known at those places then, as the different exploring parties passed through Limestone and Washington, on their return to the settlements in Kentucky.

Question by the same. Was or was not Todd, and the party that went over with him to explore the Miami country, in the spring of 1787, in the habit, on their return to the settlements, of freely describing the country in the conversation which they held with their friends and acquaintances generally?

Answer. They freely did it to me, and I believe that I got from them all the information which they had of that country; and I have no reason to believe but that they did so to others of their friends and acquaintances.

sen., Jonathan Tribby, Wm. Ruble, Thomas Constant, and Jacob Baymiller, in the sum of one thousand dollars, lawful money of the United States, and for the payment of the same hereby binding myself, my heirs, executors, and administrators, firmly by these presents. Sealed with my seal, and dated this 31st day of July, A. D. 1826.

Whereas, at the late term of the circuit court of the United States for the district of Ohio, that is to say, July term, 1826, the obligees above named recovered a judgment or decree of dismissal of the said court in their favor, in a suit in chancery brought there against them by James McDonald, complainant, from which judgment or decree the said complainant prayed an appeal to the Supreme Court of the United States, which was, by the circuit court aforesaid, allowed. Now, therefore, the condition of the above obligation is such, that if, upon such appeal to the Supreme Court aforesaid, and upon the hearing of said cause, the judgment or decree shall be rendered for the said James McDonald, then the said obligation shall be void, or if, upon such hearing the decree before the respondents aforesaid, and said James McDonald shall fully pay off to the parties entitled any and all costs now taxed, or which may or shall hereafter accrue or be taxed against him under the decree rendered or to be rendered in this suit, then the said obligation shall be void, otherwise it shall be in full force and virtue in law.

DUNCAN McARTHUR. [SEAL.]

Witness, WM. KEY BOND.

And afterwards, to wit, at a circuit court of the United States, within and for the seventh circuit, and district of Ohio aforesaid, begun and held at Columbus, on Monday, the 14th day of July, in the year of our Lord eighteen hundred and twenty-eight, and of the American independence the 53, came James McDonald, by his attorney, and filed a mandate from the Supreme Court of the United States, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA, ss.—*The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Ohio, greeting:*

Whereas, lately in the circuit court of the United States for the district of Ohio, before you, or some of you, in a cause wherein James McDonald was complainant, and Freeman Smalley and others were defendants, in chancery, it being the opinion of the said circuit court that the deed under which the complainant claims the land in controversy in this cause was fraudulently made to him, for the purpose of giving this court jurisdiction, and not bonâ fidê or upon good or sufficient consideration; it was therefore ordered by the said circuit court, that this cause be dismissed for want of jurisdiction, as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of January, in the year of our one thousand eight hundred and twenty-eight, the said cause came on to be heard before the said Supreme Court on the said transcript of the records, and was argued by counsel on the point of jurisdiction, on consideration whereof, this court is of opinion that there is error in the decree of the

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said circuit court in dismissing the complainant's bill; it is therefore decreed and ordered by this court, that the decree of the said circuit court in this cause be, and the same is hereby, reversed and annulled; and it is further ordered, that the cause be remanded to the said circuit court, for further proceedings to be had therein according to law and justice; and the same cause is hereby remanded accordingly.

You therefore are hereby commanded, that such proceedings be had in said cause, as according to right and justice, and the laws of the United States, and conformably to said opinion and decree of said Supreme Court, ought to be had, the said appeal notwithstanding.

Witness the honorable John Marshall, Chief Justice of said Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and twenty-eight.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

And thereupon, on motion of respondents, by Mr. Hammond, their solicitor, leave is granted the parties to take further testimony, and this cause is continued.

And afterwards, to wit, at the December term of said court, in the year A. D. eighteen hundred and twenty-eight, came again into court here the said parties by their counsel, and on motion of the respondents, by Mr. Hammond, their solicitor, the leave given the parties to take further testimony in the cause at the last term is extended for six months. And thereupon this cause was further continued.

And afterwards, to wit, on the 13th day of June, in the year A. D. 1829, came Philip Dodridge, Esq., attorney, on behalf of Ann Henrietta McDonald, James McArthur McDonald, Effea McDonald, and William A. McDonald, heir at law of James McDonald, deceased, and filed in the clerk's office of the court aforesaid their bill of revivor in the premises aforesaid, as follows, to wit:

To the honorable the Judges of the circuit court of the United States for the second circuit, and district of Ohio:

Humbly complaining, show to your honors, your orators, Ann Henrietta McDonald, James McArthur McDonald, Effea McDonald, and William A. McDonald, heirs at law *law* of James McDonald, deceased, infants under 21 years of age, by Eliza McDonald, their mother and next friend, all citizens of the State of Alabama, and residents therein, that heretofore the said James McDonald, as a citizen of Alabama, and resident therein, filed his bill in chancery in this honorable court against James Galloway and others, for the recovery of certain real estates in the district of Ohio, which said bill is still depending and undetermined; to which bill, with the answers, replications, depositions, and exhibits, together with all orders, entries, and other proceedings therein, your orators refer for greater certainty, and pray that the same and every part thereof may be considered and taken as parts of this their bill of revivor. Your orators pray that the said bill and suit in chancery, in the state in which it now stands, may be revived in their names and for their benefit, and proceeded in against the said defendants. They pray process against the said defendants, who are citizens and residents of Ohio, and that they may come here, and on their oaths answer the

bill, and that they may have such relief in the premises as to equity may appertain, and to your honor shall seem just and right; and will pray, &c.

P. DODRIDGE, *for complainant.*

And thereupon the following writ of subpœna issued out of the clerk's office, to wit:

THE UNITED STATES OF AMERICA, DISTRICT OF OHIO, set.—*To the Marshal of said district, greeting:*

We command you to summon Thomas Austin, William McDaniel, James Harris, Jas. Christie, Samuel T. Lowden, William Morrow, Ephraim Kibby, John Keener, George S. Harris, William Pyle, Richard Cast, William Hadley, John S. Thomas, Jacob Longsheth, Isaac Wilson, sen., George Yeazle, Andrew Christie, James Galloway, jr., John Hadley, jr., Joseph Wilson, Daniel Briggs, James T. Baker, John Gallohu, Jane Buxten, James Abbot, Shadrick Ditto, John Morrow, John Hadley, sen., Jonathan Tribly, William Ruble, Thomas Constant, and Jacob Miller, citizens of, and residents in, the State of Ohio, if they be found in your bailiwick, to appear before the judges of the circuit court of the United States for the seventh circuit, and district of Ohio aforesaid, at Columbus, on the second Monday in the month of July next, to answer Ann Henrietta McDonald, James McArthur McDonald, Effia McDonald, and William A. McDonald, heirs at law of James McDonald, deceased, infants under 21 years of age, by Eliza McDonald, their mother and next friend, all citizens of the State of Alabama, and residents therein, of a certain bill of revivor in chancery, exhibited against the said Thomas Austin et al. by the said Ann Henrietta McDonald, and others, in our said court, and this you shall in nowise omit, under the penalty of the law; and have then there this writ.

Witness the honorable John Marshall, Chief Justice of the United States, this 13th day of June, 1829, and in the 53d year of the independence of the United States of America.

Attest: WILLIAM KEY BOND, *Clerk.* [L. S.]

And afterwards, to wit, at the July term of said court, A. D. 1829, being the term to which the aforegoing writ of subpœna was, in form aforesaid, made returnable, came into court here the marshal of the district of Ohio, to whom said writ was in form aforesaid directed, and made return thereof, with the following endorsement thereon, to wit: I served this writ on James Galloway, jr., on the 25th of June, 1829, by giving him a copy of the same, and also a copy of the bill of revivor; on the 2d of July, 1829, I served it on the following named defendants, by giving to each a copy, to wit, John Hadley, jr., James Harris, William Morrow, William Philes, Richard Cast, William Hadley, and Samuel T. Lowden; on the said 2d of July, 1829, I served it on the following named persons, by leaving a copy at the dwelling house of each, to wit, Ephraim Kibby, George S. Harris, George Yeazle, James Abbot; on the 3d day of July, 1829, I served it on the following named defendants, by giving to each a copy, to wit, Thomas Austin, Daniel Briggs, Jonathan Tribby, and John Hadley, sen., and James Christie; on the 4th of July, 1829, I served it on John Kennon, by leaving a copy at his dwelling house. Isaac Wilson, Andrew Christie, Joseph Wilson, James T. Baker, Jane Buxton, Shadrick Ditto, John Morrow, William Ruble,

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William McDaniel, John S. Thomas, Thomas Constant, John Gallohu, and Jacob Longsheth, not found.

JOHN PATTERSON, *Marshal.*

And thereupon this cause was further continued.

And afterwards, to wit, at the December term of said court, A. D. 1829, came again into court here the said parties, and filed the following agreement, to wit:

JAMES McDONALD,
vs.
JAMES GALLOWAY, jr., et al. } *In chancery.*

It is agreed between the parties that the persons named in bill of revivor, filed in this cause, are the heirs and legal representatives of the said James McDonald, the original complainant, now deceased. December 29th, 1829.

C. HAMMOND, *Att'y for def'ts.*
THOMAS SCOTT, *Att'y for comp'ts.*

And thereupon this cause was further continued.

And now at this day, to wit, the 12th day of July, in the year A. D. 1830, at the time and place first aforesaid mentioned, came the parties aforesaid, by their counsel, and thereupon the following exhibits and depositions were read as evidence in this cause, to wit:

THOMAS JEFFERSON, PRESIDENT OF THE UNITED STATES OF AMERICA.—
To all to whom these presents shall come, greeting:

Know ye, that in consideration of military service performed by William Boyce, (a lieutenant,) to the United States, in the Virginia line on continental establishment, and in pursuance of an act of Congress of the United States, passed on the 10th day of August, in the year 1790, entitled An act to enable the officers and soldiers of the Virginia line on continental establishment to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Sciota, and two other acts of the said Congress, respectively passed on the 9th day of June, in the year 1794, and on the 13th day of May, 1800, amendatory of the said act, there is granted by the said United States, unto the said William Boyce, a certain tract of land, containing one thousand acres, situate between the Little Miami and Sciota rivers, northwest of the river Ohio, as by survey, bearing date the eleventh day of March, in the year one thousand seven hundred and ninety three, and bounded and described as follows, to wit: Survey of one thousand acres of land, on part of a military warrant, number three thousand six hundred and seventy-one, in favor of the said William Boyce, (the whole thereof being for two thousand six hundred and sixty-six and two-thirds acres,) on Todd's creek, an east branch of the Little Miami, beginning at three sugar trees, north corner to Stephen T. Mason's survey No. 1506, and west corner to William Boyce's survey No. 2227; thence north thirty-seven degrees west four hundred poles, crossing a large east fork at sixty poles, the creek at one hundred and forty poles, to a sugar tree and beech; thence north fifty-three degrees east four hundred poles, to an ash, walnut, and elm; thence south thirty seven degrees east four hundred poles, crossing the creek at three hundred and forty-six poles, to two ashes, sugar tree, and hoopwood, corner to Boyce; thence with his line south fifty-three degrees west four

hundred poles, crossing the East fork at three hundred and forty poles, to the beginning, with the appurtenances; to have and to hold the said tract of land, with the appurtenances, unto the said William Boyce, and his heirs and assigns, for ever.

In witness whereof, the said Thomas Jefferson, President of the United States of America, hath caused the seal of the said United States to be hereunto affixed, and signed the same with his hand, at the city of Washington, the twenty-sixth day of March, in the year of our Lord 1802, and of the independence of the United States of America the twenty-sixth.

TH. JEFFERSON. [L. S.]

By the President:
JAMES MADISON,
Secretary of State.

William Boyce was originally entitled to the bounty land granted to him by the within patent.

H. DEARBORN,
Secretary of War.

WAR OFFICE, *March* 13, 1802.

Recorded in the office of the Department of State, in vol. 3, page 74, of patents of lands granted to the Virginia line on continental establishment.

CHRISTOPHER S. THORN, *Clerk.*

THOMAS JEFFERSON, PRESIDENT OF THE UNITED STATES OF AMERICA.—*To all to whom these presents shall come, greeting:*

Know ye, that in consideration of military service performed by William Boyce, (a lieutenant,) to the United States, in the Virginia line on continental establishment, and in pursuance of an act of the Congress of the United States, passed on the 10th day of August, in the year 1790, entitled "An act to enable the officers and soldiers of the Virginia line on continental establishment to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Sciota;" and two other acts of the said Congress, respectively passed on the 9th day of June, in the year 1794, and on the 13th day of May, 1800, amendatory of the said act, there is granted by the said United States, unto the said William Boyce, a certain tract of land, containing one thousand acres, situate between the Little Miami and Sciota rivers, northwest of the river Ohio, as by survey, bearing date the eleventh day of March, in the year one thousand seven hundred and ninety-three, and bounded and described as follows, to wit: Survey of one thousand acres of land, on part of a military warrant number three thousand six hundred and seventy-one, in favor of the said William Boyce, (the whole thereof being for two thousand six hundred sixty-six and two-thirds acres,) on the east fork of Todd's creek, a branch of the Little Miami, beginning at two sugar trees, an ash, and hoopwood, south corner to Stephen T. Mason's survey No. 1507; running thence south thirty-seven degrees east four hundred poles, crossing a branch at one hundred and forty poles, to two white oaks, a sugar tree; thence south fifty-three degrees west four hundred poles, crossing the creek at two hundred and forty poles, to two hickories and a sugar tree; thence north thirty-seven degrees west four hundred poles, to three sugar trees; thence north fifty-three degrees east four hundred poles, crossing the creek at sixty poles, and a branch at three hundred and seventy poles, to the beginning, with the appurtenances: to have and to hold the

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said tract of land, with the appurtenances, unto the said William Boyce, and his heirs and assigns, for ever.

In witness whereof, the said Thomas Jefferson, President of the United States of America, hath caused the seal of the said United States to be hereunto affixed, and signed the same with his hand, at the city of Washington, the fifth day of April, in the year of our Lord 1802, and of the independence of the United States of America the twenty-sixth.

TH. JEFFERSON. [L. S.]

By the President:
JAMES MADISON,
Secretary of State.

William Boyce was originally entitled to the bounty land granted to him by the within patent.

H. DEARBORN,
Secretary of War.

WAR OFFICE, *March* 13, 1802.

Recorded in the office of the Department of State, in vol. 3, page 81, of patents of lands granted to the Virginia line on continental establishment.

CHRISTOPHER S. THORN, *Clerk.*

In the name of God, amen. I, William Boyce, of the county of Fayette, and State of Kentucky, being now in disposing mind and memory, do make and ordain this to be my last will and testament. I here note that my sons-in-law, Samuel Wilson, Blanks Moody, and Thomas Wrenn, that married my daughters Betsey, Patsey, and Nancy, have already received each and property to the full amount of what I intend them, as their patrimony of my estate. I wish it clearly understood, that the property and money above alluded to as the patrimony received by Thomas Wrenn, only includes such as was received prior to the sixth day of March, eighteen hundred and seven, (it being about the time of the commencement of my removal to this country,) and all that he has received since that date was as an agent, and not as a son-in-law, except two negroes, namely, Hector and Jemmy, received 13th June, 1808. As my estate lies in various parts of the world, and of various descriptions of property, so that I cannot make equal distribution in my will among the rest of my children, who have as yet not received their patrimony, by pointing out to each their kinds of property, in order to do equal justice to them and my loving wife, I give and bequeath every part of my estate, of every kind whatsoever, to be equally divided, by sale or otherwise, as may seem best, between my loving wife and my children, not heretofore named, and their heirs, for ever. Having particular regard to the education of my children, not as yet educated, I constitute, ordain, and appoint my loving wife Elizabeth my executrix, my sons John, William, and Thomas Wrenn, my son-in-law, the whole and sole executors of this my last will and testament. In case Thomas Wrenn should serve as an executor, after all the business of my estate is settled, and upon his rendering a fair and just account of his proceedings, then it is my wish he should be amply compensated for his trouble. Signed, sealed, and acknowledged, this ninth day of December, in the year one thousand eight hundred and eleven.

WILL. BOYCE. [SEAL.]

Witness: WILLIAM SMITH, STEPHEN SMITH.

No. 121.

Received for record 23d of March, 1816. Recorded 26th of March, 1816.
ROBERT EACHUS, *R. C. C.*

Fayette county, to wit.

February court, 1812. This last will and testament of William Boyce, deceased, was produced in court, and proved by the oaths of William Smith and Stephen Smith, the two subscribing witnesses thereto, and ordered to be recorded.

Att: JOHN D. YOUNG, *Clerk F. C. C.*

STATE OF KENTUCKY, *Fayette county, sct.*

I, John D. Young, clerk of the court for the county aforesaid, do hereby certify that the foregoing is a correct copy from the records in my office of the last will and testament of William Boyce, deceased.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, this 11th day of February, 1813, and in the 21st year of the Commonwealth.

JOHN D. YOUNG, *Clerk.* [L. S.]

STATE OF KENTUCKY, *Fayette county, to wit.*

I, Richard Higgins, presiding justice of the peace for the county aforesaid, do hereby certify that John D. Young, who has subscribed the above certificate, is clerk of the court for said county, and that his certificate and attestation is in due form of law. Given under my hand, this 11th of Feb., 1813.

RICHARD HIGGINS. [SEAL.]

STATE OF KENTUCKY, *Fayette county, to wit.*

August court, 1812. Elizabeth Boyce, the executrix named in the last will and testament of William Boyce, deceased, came into court, and took the oath required by law, and executed bond in the penal sum of sixteen thousand dollars, with William Dudley and William Ellis her securities, conditioned as the law directs.

Att: JOHN D. YOUNG, *Clerk.*

A true copy from the records in my office.

Att: JOHN D. YOUNG, *Clerk.*

I do certify that I solemnized the rites of matrimony between Gerard McKinney and Elizabeth Boyce, of Fayette county, State of Kentucky, agreeably to law. Given under my hand and seal, this 24th February, 1813.

JAS. ELLIOTT.

The above named marriage solemnized August 15, 1812.

JAS. ELLIOTT.

Fayette county, sct.

The above is a true copy from the original certificate of the Rev. James Elliott, filed and recorded in my office.

Att: JOHN D. YOUNG, *Clerk.*

STATE OF OHIO, *Clinton county, ss.* 730.

I, James W. Magee, recorder for the county aforesaid, do hereby certify the foregoing to be a true copy of the last will and testament of William Boyce, deceased, together with the certificates thereto, as recorded in my office.

In testimony whereof, I have hereunto set my hand, and seal of office, at Wilmington, this 9th of May, A. D. 1822.

JAMES W. MAGEE, *R. C. C.* [L. S.]

This indenture, made this twentieth day of May, in the year of our Lord one thousand eight hundred and sixteen, between Richard Cast, and Elizabeth his wife, of the county of Clinton, and State of Ohio, of the one part, and William Pyle, of the county and State aforesaid, of the other part, witnesseth, that the said Richard Cast, and Elizabeth his wife, for the consideration of the sum of four hundred and seventeen dollars and seventy-five cents, current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, *here* granted, bargained, and sold, and by these presents doth grant, bargain, and sell, and confirm, unto the said William Pyle, his heirs and assigns, a tract or parcel of land, situated and being in the county of Clinton, and State of Ohio, on Todd's fork, being part of two military surveys No. 2227 and No. 2245, agreeable to patents to William Boyce, bearing date the 5th of April, 1802, and the other 1802, beginning at a supposed corner in the middle of Todd's fork, and in the southeasterly line of No. 2245, from a beech there on the south bank 20 inches diameter, bears S. 37 E 4 poles; thence 37° 48' E. 66½ poles, to an ash and two sugar trees, southeasterly corner to the above number, and N. E. corner to No. 2227; thence with said line S. 36¾° E. 35½ poles, to a stake where a sugar tree stands, S. 20° W. 29 links; thence S. 20° W. 43 poles 11 links, to a beech; thence N. 70° W. 64 poles, to the middle of the aforesaid creek, in its meanders, N. 3 W. 9 poles, N. 5° E. 22 poles, N. 10° E. 8 poles, N. 8° E. 18 poles, N. 9° E 20 poles, N 23° E. 18 poles, N. 8° W. 10 poles, N. 29 W. 6½ poles, to the beginning, containing thirty-three acres one rood and 27½ poles; together with all and singular the premises thereunto belonging or in anywise appertaining: to have and to hold the said land hereby conveyed, with all the appurtenances, unto the said William Pyle, his heirs for ever: and the said Richard Cast, and Elizabeth his wife, doth for themselves, their executors and administrators, and the aforesaid patentees, and their heirs, executors, and administrators, the aforesaid tract of land and premises, unto the said William Pyle, his heirs and assigns, against the claim or claims of all and every person or persons whatever claiming under the said Richard Cast, or under the aforesaid patentees, and will warrant and for ever defend by these presents.

In witness whereof, the said parties hereunto set their hands and seals, the day and date first above written.

RICHARD CAST. [SEAL.]
ELIZABETH CAST. [SEAL.]

Witness: WILLIAM HADLEY, JAMES HARRIS.

STATE OF OHIO, *Clinton county.*

Personally appeared before me, one of the acting justices of the peace in and for the county aforesaid, Richard Cast, and Elizabeth his wife, acknow-

ledged the signing, sealing, and delivering the foregoing deed, for the purpose therein specified. Given under my hand and seal, this the twentieth day of May, 1816.

JAMES HARRIS. [SEAL.]

Received for record August 28, 1816. Recorded 14th September, 1816, in book B, pages 201, 202, one of the land records for Clinton county, Ohio.

JAMES W. MAGEE, *R. C. C.*

This indenture, made this twenty-third day of March, in the year of our Lord one thousand eight hundred and sixteen, between Gerard McKenney, and Elizabeth his wife, executrix, and John Boyce, executor of William Boyce, deceased, of the one part, of the county of Fayette, and State of Kentucky, and William Hadley, of the county of Clinton, and State of Ohio, of the other part, witnesseth, that the said Gerard McKenney, and Elizabeth his wife, executrix, and John Boyce, executor of William Boyce, deceased, for and in consideration of the sum of one thousand nine hundred dollars, current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents doth grant, bargain, sell, and confirm, unto the said William Hadley, his heirs and assigns, a tract or parcel of land, situate and being in the county of Clinton, in the State of Ohio, on Todd's fork, being part of two military surveys No. 2227 and 2245, agreeable to the patents to the said William Boyce, one bearing date 5th April, 1802, and the other 26th March, 1802, containing three hundred and seventy-eight acres and thirty-one poles, beginning at a supposed corner in the middle of Todd's fork, where a large forked sycamore, on the south bank, bears S. 32 E. 5 poles; thence S. 38 E. crossing the East fork, 136¾ poles, to three sugar trees; thence S. 35 38 E. 265¾ poles, to a stake where a white oak, 9 inches diameter, bears N. 55 W. 9 links, and a sugar tree, 4 inches diameter, bears S. 69 E. 7 links, corner to Aaron Oxley; thence N. 53 E. 194 poles 16 links, to a stake where a gum, 12 inches diameter, bears N. 53 E. 10 links, and a sugar tree, 12 inches diameter, bears N. 51 W. 22 links, in the line of Aaron Oxley, and corner to Richard Cast; thence with said Cast's line N. 36¾ W. 199 poles, to the middle of Todd's fork; thence down the said creek, with the meanders thereof, to the beginning; together with all and singular the premises thereunto belonging or in anywise appertaining: to have and to hold the said land thereby conveyed, with all the appurtenances, unto the said William Hadley, his heirs, for ever; and the said Gerard McKenney, and Elizabeth his wife, executrix, and John Boyce, executor of William Boyce, deceased, for themselves, their heirs, executors, and administrators, the aforesaid tract of land and premises, unto the said William Hadley, his heirs and assigns, against the claim or claims of all and every person or persons whatsoever claiming under the said William Boyce, or under the said Gerard McKenney, and Elizabeth his wife, executrix, and the said John Boyce, executor, do and will warrant and for ever defend by these presents.

In witness whereof, the said parties have hereunto set their hands and seals, the day and date first above written.

GERARD McKENNEY, and
ELIZABETH, his wife, *Executrix.* [SEAL.]
JOHN BOYCE, *Executor.* [SEAL.]

Witness: WILLIAM PYLE, JAMES HARRIS.

STATE OF OHIO, *Clinton county, sct.* 797.

Personally appeared before me, one of the acting justices of the peace in and for the county aforesaid, Gerard McKenney, for himself, and Elizabeth his wife, executrix, and John Boyce, executor of William Boyce, deceased, and acknowledged the signing, sealing, and delivering the foregoing deed, for the purposes therein specified. Given under my hand seal, this 23d day of March, 1816.

JAMES HARRIS. [SEAL.]

Received for record August 28, 1816. Recorded September 12, 1816, in book B, pages 199 and 200, one of the land records for Clinton county, Ohio.

JAMES W. MAGEE, *R. C. C.*

This indenture, made the twenty-third day of March, in the year of our Lord one thousand eight hundred and sixteen, between Gerard McKenney, and Elizabeth his wife, executrix, and John Boyce, executor of William Boyce, dec'd, of the county of Fayette, and State of Kentucky, of the one part, and Richard Cast, of the county of Clinton, and State of Ohio, of the other part, witnesseth, that the said Gerard McKenney, and Elizabeth his wife, executrix, and John Boyce, executor of William Boyce, deceased, for and in consideration of the sum of nine hundred dollars, current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents doth grant, bargain, sell, and confirm, unto the said Richard Cast, his heirs and assigns, a tract or parcel of land situate and being in the county of Clinton, in the State of Ohio, on Todd's fork, being part of two military surveys No. 2227 and No. 2245, agreeable to two patents to the said William Boyce, bearing date 5th April, 1802, and the other 26th March, 1802, containing three hundred acres, beginning at a supposed corner in the middle of Todd's fork, from whence a beech, 20 inches diameter, bears S. 37 E. 4 poles; thence S. 37° 37 E. 66 poles, to two sugar trees and ash; thence S. 36¾ E. 296½ poles, to a stake where a hickory, 16 inches diameter, bears N. 73 E. 24 links, and a maple, 20 inches diameter, bears N. 80 W. 14 links; thence S. 53 W. 179 poles 9 4/10 links, to a stake where a gum, 12 inches diameter, bears N. 53 E. 10 links, and a sugar tree, 12 inches diameter, bears N. 51 W. 22 links; thence N. 36¾ W. 199 poles, to the middle of Todd's fork; thence up the middle of the creek, with the meanders thereof, to the beginning; together with all and singular the premises thereunto belonging or in anywise appertaining: to have and to hold the said land hereby conveyed, with all the appurtenances, unto the said Richard Cast, his heirs, for ever: and the said Gerard McKenney, and Elizabeth his wife, executrix, and John Boyce, executor of William Boyce, deceased, for themselves, their heirs, executors, and administrators, the aforesaid tract of land and premises, unto the said Richard Cast, his heirs and assigns, against the claim or claims of all and every person or persons whatsoever claiming under the said William Boyce, or under the said Gerard McKenney, and Elizabeth his wife, executrix, and the said John Boyce, executor, do and will warrant and for ever defend by these presents.

In witness whereof, the said parties have hereunto set their hands and seals, the day and date first above written

GERARD McKENNEY, and
ELIZABETH, his wife, *Executrix.* [SEAL.]
JOHN BOYCE, *Executor.* [SEAL.]

Witness:

STATE OF OHIO, *Clinton county, sct.*

Personally appeared before me, one of the acting justices of the peace in and for the county aforesaid, Gerard McKenney, for himself, and Elizabeth his wife, executrix, and John Boyce, executor of William Boyce, deceased, and acknowledged the signing, sealing, and delivering the foregoing deed, for the purposes therein specified. Given under my hand and seal, this 23d day of March, 1816.

JAMES HARRIS. [SEAL.]

Received for record the 28th of September, 1816. Recorded 2d October, 1816, in book B, page 216, one of the land records for Clinton county, Ohio.

JAMES W. MAGEE, *R. C. C.*

United States of America, 7th circuit court, Ohio district.

JAMES McDONALD, *complainant,*
versus
RICHARD CAST, JAS. GALLOWAY, Jr., and others, *def'ts.* } *In chancery.*

The plaintiff will take notice, that, pursuant to the act of Congress in such case made and provided, the defendants will, between the hours of 6 o'clock in the morning and 6 o'clock in the afternoon, on Tuesday, the 2d day of July next, take the deposition of Francis Dunlavy, (an aged and infirm man,) and others, at the office of, and before the undersigned, (president judge of the court of common pleas for the seventh circuit, and State of Ohio,) in the town of Lebanon, Warren county, Ohio, and that the same will be used on the trial of the above cause, now depending and undetermined in the United States' seventh circuit court for the Ohio district. June 19th, 1829.

GEORGE J. SMITH,
Pres't judge C. C. P. 7th circuit, Ohio.

THE STATE OF OHIO, *seventh judicial circuit, ss.*

The deposition of Francis Dunlavy, (an aged and infirm man,) taken pursuant to the enclosed notice, before me, the undersigned, (president judge of the court of common pleas for the seventh circuit, in the State of Ohio,) at my office, in the town of Lebanon, Warren county, Ohio, on Thursday, the 2d day of July, A. D. 1829, and between the hours of 6 o'clock in the morning and 6 o'clock in the afternoon of said day, to be read in evidence on the trial of a cause now depending and undetermined in the circuit court of the United States for the seventh circuit, and district of Ohio, wherein James McDonald is complainant, Richard Cast, James Galloway, jr., and others, are defendants; said deposition taken in the presence of John L. Taylor, Esquire, who attends to cross-examine on the part of the complainant; and John Hadley, jr., one of the above defendants, said deposition taken on behalf of the defendants. The said Francis Dunlavy, being of lawful age, and by me duly

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sworn, deposeth and saith, that he has been acquainted for between forty and fifty years past with the country which now constitutes the State of Ohio, and the principal streams running through it and emptying into the Ohio river. There are two rivers in the State of Ohio, and in the same neighborhood, from fifteen to twenty miles apart, the one called the Great Miami, the other the Little Miami; that the mouth of the stream now called "Todd's fork," which stream enters into the Little Miami, is about fifteen miles from the Great Miami river; that these rivers (the Great and Little Miami) have been notorious to persons conversant with the western country since the year seventeen hundred and eighty-six, having been described in a pamphlet history, by one Filson, about the period last mentioned, (1786,)and which pamphlet was of general circulation throughout the United States, or at least such parts of the western States as were then settled. Deponent further states, that from that period until the present, those rivers, the Great and Little Miami, have been thus named and distinguished, to wit, by the additions "Great" and "Little," out of their immediate neighborhoods. Deponent never heard of the creek now called "Todd's fork" by that or any other name until the year 1791 or 1792; that at the time last mentioned (1791 or 1792) the said creek was called sometimes the "Little East fork," and at other times "Todd's fork," promiscuously. There was no settlement on or near said stream until the year 1796. Deponent knows where the office of the late Col. Richard C. Anderson has been kept for the last thirty odd years; which, until its recent removal, was some two hundred miles from the mouth of Todd's fork, by the way of the trace then run, and which was commonly travelled until within thirty years last past, or thereabouts.

Question by John L. Taylor, Esquire, on behalf of complainant. 1st. Were you acquainted in the settlements of Maysville and Washington, Kentucky, prior to 1787? if so, were you engaged prior to the 26th of August, 1787, in the locating and surveying of Virginia military land warrants between the Scioto and Little Miami rivers?

Answer. I was not personally acquainted in the settlements of Maysville and Washington, Kentucky, prior to 1787; and never was engaged in the locating and surveying of Virginia military land warrants between the Scioto and Little Miami rivers, with the exception of locating one or two warrants, long after 1787?

2d. Where was Col. R. C. Anderson's office kept anterior to 24th August, 1787?

Answer. At a place now called Middletown, twelve or fifteen miles from Louisville, Jefferson county, Kentucky.

3d. Were you acquainted with, or in the habit of reading, the entries made in Col. Richard C. Anderson's office, or the books of said office, previous to the 23d or 24th of August, 1787?

Answer. No; I never saw any of the entries until after that time, as well as I now recollect; nor was I ever at his office until several years after the year 1787.

4th. Were you acquainted with those who did business in that office in August, 1787, the locators and surveyors of Virginia military land warrants, say Robert Todd, Nathaniel Massie, John Harrison, or John O'Bannan? if so, did you ever inquire of them as to the stream now called Todd's fork? and what were their answers?

Answer. I knew neither of the above named persons personally so early as 1787; I knew Massie and O'Bannan by character; with Massie and O'Bannan I became acquainted about the year 1791, and knew them from that time until their deaths; I recollect of having no conversation with either of them on the subject of the stream now called Todd's fork.

5th. Where did you reside, and what was your business, previous to August, 1787?

Answer. I had no family or fixed residence until subsequent to the year 1787; previous to 1787 my father resided on the waters of the Ohio river, and near the source of said river, where I sometimes resided. From the year 1797 until after the close of the revolutionary war, I was a part of almost every year on the frontiers, in the military service of the country; I had no setiled or permanent business or occupation until after the year 1787, except during a part of the time that I followed teaching school.

6th. Were you acquainted with Cæsar's creek previous to August, 1787, or the East fork of the Little Miami?

Answer. I was not acquainted with either prior to that time.

7th. Were you personally acquainted with the auxiliary branches of the Little Miami prior to the 24th of August, 1787? if not, where did you first become acquainted with the country bordering on the same?

Answer. I did not become acquainted with those branches until about the year 1791; about which time, I became personally acquainted with the country bordering on the Little Miami river.

8th. Were any of the streams auxiliary to the Little Miami, viz. Todd's fork, Cæsar's creek, or Massie's creek, mentioned in Filson's pamphlet history which you have named?

Answer. I think not: but I have not read the said pamphlet for upwards of thirty years.

9th. Were you out with General Clark, of Kentucky, on any of his campaigns or expeditions against the Indians, prior to 1787?

Answer. I was not.

Deponent further states, that when he first heard of the name of Todd's fork and the Little East fork, it was at Washington, in Kentucky, and Columbia, at the mouth of the Little Miami river, about the period before mentioned, 1791 or 1792, which were then the principal settlements in Kentucky, and the then northwestern territory, (now Ohio,) nearest said stream, in both of which places I was at that time well acquainted, being frequently back and forward at each of those places; and in both of which places I occasionally resided as early as 1791 and 1792. And further deponent saith not.

FRANCIS DUNLAVY.

THE STATE OF OHIO, *seventh judicial circuit, ss.*

I do hereby certify that the foregoing deposition of Francis Dunlavy (an aged and infirm man) was taken before me, at the time and place, and between the hours, in the enclosed notice and caption of this deposition stated, that the deponent was by me duly sworn, and that he subscribed said deposition in my presence. Given under my hand and seal, this 2d July, 1829.

GEO. J. SMITH, [SEAL.]

Pres't judge, C. C. P. 7th circuit, Ohio.

739.

United States of America, 7th circuit court, Ohio district.

JAMES McDONALD, *complainant,*
versus
RICHARD CAST, JAMES GALLOWAY, jr., and others, *def'ts* } *In chancery.*

The plaintiff will take notice, that, pursuant to the act of Congress in such case made and provided, the defendants will, between the hours of 6 o'clock in the morning and 6 o'clock in the afternoon on Saturday, the 4th day of July next, take the deposition of John Reily, Esq., an aged and infirm man, and others, at the office of the clerk of the court of common pleas of the county of Butler, of the State of Ohio, in Hamilton, before Daniel Millikin, Esq., the undersigned, an associate judge of the said court of common pleas of the county of Butler, in the State of Ohio, and that the same will be used on the trial of the above cause now pending and undetermined in the United States' seventh circuit court for the Ohio district. June 19th, 1829.

DANIEL MILLIKIN,
Associate judge C. C. P. Butler county.

We, the undersigned, John Hadley, one of the defendants in the within notice mentioned, and John L. Taylor, on behalf of the complainant, agent Duncan McArthur, do mutually agree to take the deposition of the within named John Reily on the third day of July instant, instead of the fourth, as stated in the within notice.

JOHN HADLEY, JR.
J. L. TAYLOR.

THE STATE OF OHIO, *Butler county, ss.*

Be it known, that, agreeably to the notice herewith enclosed for taking testimony in a cause now pending in the district court of the United States for the seventh circuit, in the State of Ohio, wherein James McDonald is complainant, and Richard Cast and others defendants, I, Daniel Millikin, associate judge of the court of common pleas of the county of Butler, caused to come before me, at the office of the clerk of the said court of common pleas, at Hamilton, in the said county of Butler, on the third day of July, one thousand eight hundred and twenty-nine, John Reily, in the said notice named, who, being duly sworn to the interrogatories propounded in the schedule herewith enclosed, answereth and saith as follows:

To interrogatory first. I commenced my residence in Columbia in the month of December, one thousand seven hundred and eighty-nine.

To interrogatories 2d and 3d. I have no distinct recollection at what time I first learned that there was such a stream as Todd's fork, but I am induced to believe not at an earlier day than in the fall of the year one thousand seven and ninety-five.

To interrogatories 4th and 5th. I have no recollection that I ever heard the stream called Todd's fork called or known by any other name than that of Todd's fork.

To interrogatory 6th. A settlement, which was known by the name of Covault's station, on the east bank of the Little Miami, about ten miles north of Columbia, and the same distance nearer to Todd's fork, was commenced either in the winter of one thousand seven hundred and eighty-nine, or very early in the year seventeen hundred and ninety; and, as well as I can recollect, Mr. Covault himself was killed at the station, in the

summer of seventeen hundred and ninety, certainly not at a later day than seventeen hundred and ninety-one.

On being cross-examined by John L. Taylor, on the part of the complainant, the said John Reily answereth and saith:

I never was engaged in or in anywise concerned in the location of lands, either in Kentucky or elsewhere. I had no acquaintance with the locators or surveyors of Virginia military land warrants, to my knowledge, previous to my commencing my residence in Columbia, as hereinbefore stated. I was not in any of the campaigns carried on against the Indians north of the Ohio river, nor was I ever north of the Ohio river until the month of December, one thousand seven hundred and ninety-nine; for some years previous to that period I resided in the counties of Lincoln and Mercer, in Kentucky, employed in farming, school-teaching, and the like.

JOHN REILY, *Associate Judge.*

Sworn and subscribed before me, at the day and place aforesaid, to wit. 3d July, 1829.

DAN MILLIKIN,
Associate Judge Court C. P. Butler county.

THE STATE OF OHIO, *Clinton county, ss.*

This day personally appeared before me, the subscriber, a justice of the peace for the county aforesaid, William Hadley, who acknowledged the within to be a true plot of the town of Clarksville, and that he freely relinquishes his right to all the streets and alleys therein contained for the use and benefit of said town. Given under my hand and seal, the 27th day of April, 1818.

JAMES HARRIS. [SEAL.]

[*For plat, see original.*]

This plat represents the town of Clarksville, situate on a handsome piece of ground, where the county road leading down Todd's fork intersects the College township road, and is laid down by a scale of eight poles per inch, beginning at a stake in the centre of Main and First streets. All the lots in Main street are four poles in front, and eight poles back; the others are reverse, fronting 4 poles on First and Second streets, and eight back those on Main street, and are all to be known by their numbers 1, 2, 3, 4, 5, &c., to 44, &c. The course of Main street is south 66" east, and First and Second streets crossing at right angles, or south 24° west, &c. 4th mo. 17th, 1816. Surveyed for Wm. Hadley, proprietor.

And the cause coming on to be heard upon the bill, answers, replications, exhibits, deeds, depositions, and arguments of counsel heard, and mature deliberation had, the court order, adjudge, and decree, that the bill be dismissed at the cost of the complainants; and thereupon the complainants prayed an appeal from said decree to the Supreme Court of the United States, pursuant to the act of Congress in such case made and provided; and it being agreed by the parties that the property in dispute exceeds two thousand dollars in value, the court do grant said prayer and allow said appeal, on the complainants' giving bond and security in the sum of five hundred dollars to the satisfaction of said court. And thereupon the said complainants filed in court here the following bond to perfect said appeal, to wit:

740.

Know all men by these presents, that I, Duncan McArthur, of the county of Ross, in the State of Ohio, am held and firmly bound unto James Galloway and others, of the State of Ohio, in the sum of five hundred dollars, lawful money, for the payment of which I bind myself, my heirs, executors, and administrators, firmly, by these presents; sealed with my seal, and dated the twentieth day of July, A. D. 1830.

The condition of this obligation is this: whereas, at the July term of the United States' circuit court for the district of Ohio, in the year of Lord one thousand eight hundred and thirty, upon the hearing and consideration of a certain suit in chancery pending in said court, between Ann Henrietta McDonald, James McArthur McDonald, Effia McDonald, and William A. McDonald, complainants, and the said James Galloway and others, defendants, it was by said court ordered and decreed that the bill of revivor of the said complainants, against the said James Galloway and others, should be dismissed at the costs of the said complainants; from which said decree the said Ann Henrietta McDonald and others, complainants, as aforesaid, prayed and was allowed an appeal to the Supreme Court of the United States, pursuant to the act of Congress in such case made and provided, as by reference to the proceedings of said circuit court in said cause will more fully and at large appear. Now, if the aforesaid bill of revivor shall be finally dismissed by the Supreme Court aforesaid, then they, the said Ann Henrietta McDonald, and others, complainants, or the said Duncan McArthur, shall faithfully pay off and discharge all cost that now are or may hereafter be adjudged or decreed against said Ann Henrietta McDonald, and others, complainants, in the matter aforesaid, then this obligation to be void and of no effect, otherwise to be and remain in full force and virtue.

DUNCAN McARTHUR. [SEAL.]

Witness present, J. MILTON WILLIAMS.

On the back of said bond the following approval was endorsed, to wit:

Approved: JOHN McLEAN,
JOHN W. CAMPBELL.

July 20th, 1830.

THE UNITED STATES OF AMERICA, DISTRICT OF OHIO, set.

I, William Miner, clerk of the seventh circuit court of the United States in and for the district of Ohio aforesaid, do hereby certify the aforegoing to be a true transcript of the record, decree, and proceedings thereon, in a suit determined in said court, in which the heirs of John McDonald were complainants, and Freeman Smally and others respondents, as the same remains on the records and files of said court.

In testimony whereof, I have hereunto set my name, and affixed the seal of said court, the sixth day of December, A. D. eighteen hundred and thirty, and of the American independence the fifty-fifth.

Att: WILLIAM MINER, *Clerk.* [L. S.]

This transcript, &c., $121 00.

Rec'd of plaintiff, by the hand of Hon. Duncan McArthur, one hundred and twenty-one dollars, the amount of this transcript.

W. MINER, *Clk.*

No.

791.

SUPREME COURT OF THE UNITED STATES.

No. 61.

SETH SPRING ET. AL., PLAINTIFFS IN ERROR,

VERSUS

WM. GRAY'S EXECUTORS.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE MAINE DISTRICT.

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(*Citation.*)

DISTRICT OF MAINE, ss.—*First circuit.—The President of the United States of America, to the Marshals of our districts of Maine and Massachusetts, respectively, or to their respective deputies, greeting:*

Whereas in the record and in the judgment of a suit which was determined in our circuit court for the first circuit, holden at Wiscasset, within

and for our said Maine district, on the 1st day of October last, in which suit Seth Spring and John Spring, of Saco, in the State of Maine, as surviving partners of the firm of Seth Spring and Sons, composed of the plaintiffs, and Andrew M. Spring, deceased, were plaintiffs, and William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, all of Boston, in the commonwealth of Massachusetts, as they are executors of the last will and testament of William Gray, late of said Boston, merchant, deceased, were defendants, manifest error, it is said, has intervened, to the great damage of the said Seth Spring and John Spring, as by their complaint we perceive; which record and judgment we, for certain reasons, have caused to be brought before our Justices of our Supreme Court next to be holden at the city of Washington, on the second Monday of January next, for hearing such errors as aforesaid, in order that the error therein, if any there be, may be duly corrected.

We command you, therefore, that you make known unto the said William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, that they be before our said Justices of our said Supreme Court, to be holden at the city of Washington on the second Monday of January next, to hear the record and judgment aforesaid, if they shall see cause, and to do and receive in this behalf whatever the same court shall consider thereupon.

Given under the hand of one of our justices of our said circuit court for said circuit, and the seal of the said court, the ninth day of December, in the year of our Lord one thousand eight hundred and thirty.

[L. S.] ASHUR WARE, *District Judge*
And one of the justices of the circuit court for the Maine district.

UNITED STATES OF AMERICA, DISTRICT OF MAINE, ss.—*Dec'r* 9, 1830.

Pursuant to this precept, and by an action of John Spring, one of the plaintiffs within mentioned, I have this day served this precept upon Stephen Longfellow, Esq., counsel of record, as is said, for the within named William R. Gray and others, executors, by giving him, in hand, a true copy thereof; the said Grays not residing within this district.

WENDELL P. SMITH,
Dep. Mar. Maine district.

Fees—Travel	
Service	$2 00
Copy	1 00
	$3 00 paid by Spring.

UNITED STATES OF AMERICA, *District of Massachusetts.—Boston, December* 11, 1830.

Pursuant hereunto, I served this precept on the within named Wm. R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, by leaving, at their last and usual places of abode, respectively, a true and attested copy of this precept.

SAM'L D. HARRIS, *Marshal.*

5 service	$10
5 copies	5
Travel	6
	$21, fees paid, Dec'r 11, 1830, by Willis Barnabee.

742.

(Writ of error.)

UNITED STATES, ss.—*The President of the United States, to the judges of the circuit court holden in and for the district of Maine, greeting:*

Because that, in the record and process, and also in the rendering of judgment, in a suit before you, between Seth Spring and John Spring, of Saco, in the State of Maine, surviving partners of the firm of Seth Spring and Sons, plaintiffs, and William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, all of Boston, in the commonwealth of Massachusetts, as they are executors of the last will and testament of William Gray, late of said Boston, merchant, deceased, defendants, in a plea or action of assumpsit, manifest error has intervened, to the great damage of the said Seth Spring and John Spring, as in their complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that, if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and Associate Justices of the Supreme Court of the United States, on the second Monday of January next, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable John Marshall, Esq., Chief Justice of the said Supreme Court, at Washington aforesaid, this ninth day of February, in the year of our Lord one thousand eight hundred and thirty, and of the independence of the United States the fifty-fourth.

[L. S.] JOHN MUSSEY, *Clerk.*

UNITED STATES OF AMERICA, *Maine district*, ss.

December 20, 1830.—Pursuant to the within writ, directed to the judges of the circuit court for said district, I do hereby, under my seal, distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, to the Chief Justice and Associate Justices of the Supreme Court of the United States at Washington, to be holden at the time within mentioned.

[L. S.] ASHUR WARE,
Judge of the U. States for the district of Maine.

(Assignment of error, &c.)

To the Chief Justice and Associate Justices of the Supreme Court of the United States, to be holden at the city of Washington, being the present seat of the National Government, on the second Monday of January next.

Complains Seth Spring, of Biddeford, and John Spring, of Saco, both in Maine district, merchants, and surviving partners of the firm of Seth Spring and Sons, that in the record of a suit wherein they were plaintiffs, and Wil-

liam R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, all of Boston, in the commonwealth of Massachusetts, executors of the last will and testament of William Gray, late of said Boston, merchant, deceased, were defendants, in the circuit court of the United States for the first circuit, holden at Wiscasset, within and for Maine district, on the first day of October last past, whereof an authenticated transcript shall be produced, the following manifest error hath intervened, to wit, that the judgment rendered in the said suit is, "that the said Seth Spring and John Spring take nothing by their writ, and that the said William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray recover against the said Seth Spring and John Spring their costs in this behalf expended:" whereas it ought to be, that the said Seth Spring and John Spring recover against the goods and estate of the said William Gray, deceased, testate, in the hands and under the administration of the said William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, executors as aforesaid, the sum of thirty four thousand four hundred and seventy-seven dollars and forty-five cents debt, or damage, and costs of suit.

Wherefore the said Seth Spring and John Spring pray the consideration of the justices aforesaid, and that the judgment aforesaid, and every part thereof, may be reversed.

ETHER SHEPLEY,
Attorney for plaintiffs.

November 13, 1830.

(*Bond to prosecute error.*)

Know all men by these presents, that we, John Spring, of Saco, in Maine district, as principal, and Seth Storer, of Scarborough, in said district, as surety, esquires, are held and stand firmly bound unto William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, all of Boston, in the commonwealth of Massachusetts, as they are executors of the last will and testament of William Gray, late of said Boston, merchant, deceased, in the sum of two hundred dollars, to be paid to the said executors on demand; to the payment of which sum, we bind ourselves, our heirs, executors, and administrators firmly, by these presents. Sealed with our seals. Dated the ninth day of December, A. D. one thousand eight hundred and thirty.

The condition of the foregoing obligation is this: that whereas at the circuit court of the United States for the first circuit begun and holden at Wiscasset, within and for said Maine district, on the first day of October last past, in a suit wherein Seth Spring and John Spring, of said Saco, as surviving partners of the firm of Seth Spring and Sons, were plaintiffs, against the said William R. Gray and others, executors as aforesaid, judgment was rendered in said suit that the said plaintiffs take nothing by their writ, and that the said defendants recover their costs of suit, for the reversal of which judgment the said Seth Spring and John Spring have sued out from the circuit court aforesaid a writ of error, directed to the judges of said circuit court, and returnable to the Supreme Court of the United States to be holden at the city of Washington on the second Monday of January next: Now if the said Springs shall prosecute their said writ of error to effect, and shall answer all damages and costs if they shall fail to make good their plea,

then the above obligation to be void, otherwise the same is to remain in full force and virtue.

J. SPRING, [L. S.]
SETH STORER, [L. S.]

Signed, sealed, and delivered in presence of
ENOCH PAINE.

A true copy. Attest: JOHN MUSSEY, *Clerk.*

(*Judgment of common pleas.*)

STATE OF MAINE, YORK, ss.—*At the court of common pleas begun and held at Alfred, within and for the county of York, on the last Tuesday of May, being the twenty-sixth day of said month, anno Domini* 1829. *Present, the Honorable Ezekiel Whitman, Chief Justice.*

Seth Spring, of Biddeford, and John Spring, of Saco, both in the county of York, merchants, and surviving partners of the late firm of Seth Spring and Sons, plaintiffs, against William R. Gray, Henry Gray, and Horace Gray, merchants, and Francis C. Gray and John C. Gray, Esqs., all of Boston, in the county of Suffolk and commonwealth of Massachusetts, executors of the last will and testament of William Gray, late of said Boston, deceased, testate, defendants; in a plea of the case, for that the said William Gray, in his lifetime, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and twenty-one, to wit, at said Saco, was justly indebted to the plaintiffs and one Andrew M. Spring, then alive, but since deceased, the said Seth, John, and Andrew M. then being copartners transacting business as merchants, in the name of Seth Spring and Sons, in the sum of thirty-four thousand four hundred and seventy-seven dollars and forty five cents, according to the account annexed to the writ, and in balance of the same; and being so indebted, the said William, in his lifetime, then and there promised the plaintiffs and the said Andrew, then alive, but since deceased, to pay them the same sum on demand. And also, for that the said William Gray, heretofore, to wit, on the first day of June aforesaid, to wit, at said Saco, being then alive, was justly indebted to the plaintiffs, and one Andrew M. Spring, then alive, but since deceased, they then being co-partners, doing business as merchants in the name of Seth Spring and Sons, in the other sum of forty thousand dollars, for so much money by the said William Gray, before that time, had and received, to and for the use of the said Seth, John, and Andrew M.; and being so indebted, the said William Gray then and there, in consideration thereof, promised the said Seth, John, and Andrew, to pay them the same sum on demand. Yet the said William Gray, though thereto often requested, has never paid said sums, in his lifetime, nor the said executors since his decease, though also thereto often requested, but still neglect and refuse so to do, to the damage of the said Seth and John, as they say, the sum of fifty thousand dollars.

And now the said William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, enter their appearance in this court, and, at the same time, file their petition, praying that the said cause may be removed for trial into the circuit court of the United States for the first circuit, to be holden at Wiscasset, within and for the district of Maine, on the first day of October next, shewing that they, and each of them, are citizens

of the commonwealth of Massachusetts, and resident therein; that the matter in dispute in this action exceeds the sum or value of five hundred dollars, exclusive of costs, and that special bail is not required therein.

Whereupon it appearing to the satisfaction of the court here, that the said William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, are citizens of the commonwealth of Massachusetts, and resident therein; that the matter in dispute exceeds the sum or value of five hundred dollars, exclusive of costs; that special bail is not required in said action; and the said William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, having filed their bond in the sum of fifty thousand dollars, with good and sufficient surety to the satisfaction of this court and of the plaintiffs, conditioned that the said William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, shall duly appear in the said circuit court of the United States, to be holden as aforesaid on the first day of the session thereof, and enter copies of said process against them:

It is therefore considered and ordered by the court here, that the said cause be removed for trial into the said circuit court of the United States, to be holden at Wiscasset aforesaid, on the first day of October next, and that this court proceed no further in this case.

Attest, JERE. BRADBURY, *Clerk.*

A true copy of the record.

Attest, JERE. BRADBURY, *Clerk.*

A true copy as on file.

Attest, JOHN MUSSEY, *Clerk.*

(*Account annexed to writ.*)

Dr. *William Gray, Esq., of Boston, Mass., in account with Seth Spring & Sons.* *Cr.*

1810.					
Sept.	For loss sustained on the sloop Fanny, Capt. Ebenezer Jordan, master, which said Gray		1811.	By amount of the outward cargo of the barque Morning Star, as	
1811.	insured - - - - - -	2,500 00		per original invoice and bills of	
Oct.	For 35,000 gals. olive oil, in casks, delivered from barque Morning Star, William Nason,			lading - - - -	35,202 83
	master, in Boston, at $1 25 per gal. -	43,750 00		By his half the profits of said Morning Star's voyage - -	14,469 03
	For 127 cases do. delivered by same -	1,270 00	1829.	By balance now due from estate of	
	For 53,803 lbs. cotton left with Mr. Lear in Algiers, and afterwards paid for by the Dey of Algiers to Com. Stephen Decatur, and received by said Gray, 30 cts. per lb. -	16,140 90		said Wm. Gray - -	34,477 45
	For cash paid by Andrew M. Spring to Bainbridge & Brown, merchants, England, and by them placed to credit of William Gray -	2,000 00			
	For cash paid And. M. Spring's commissions 2½ pr. ct. on said barque's outward cargo,				
1829.	as per agreement - - - -	880 00			
	For interest, on loss on Fanny 19 years -	2,850 00			
	For interest on one-half the profits of Morning Star's voyage, as per agreement - -	14,758 41			

Copy. Attest, JERE. BRADBURY, *Clerk.*

A true copy.

Attest, JOHN MUSSEY, *Clerk.*

74.

STATE OF MAINE, YORK, ss.—*To the Sheriff of our county of York, or his deputy, or any Coroner of our county of Cumberland, greeting:*

We command you to attach the goods or estate of William Gray, late of Boston, in the county of Suffolk and commonwealth of Massachusetts, merchant, deceased, testate, in the hands and under the administration of William R. Gray, Henry Gray, and Horace Gray, merchants, and Francis C. Gray and John C. Gray, Esqrs., all of said Boston, executors of the last will and testament of said William Gray, deceased, to the value of fifty thousand dollars, and summon said William R., Henry, Horace, Francis C., and John C., (if they may be found in your precinct,) to appear before our justices of our court of common pleas next to be holden at York, within and for our said county of York, on the last Tuesday of May next; then and there in our said court, to answer unto Seth Spring, of Biddeford, and John Spring, of Saco, both in said county of York, merchants, and surviving partners of the late firm of Seth Spring and Sons, in a plea of the case, for that the said William Gray, in his lifetime, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and twenty one, to wit, at said Saco, was justly indebted to the plaintiffs and one Andrew M. Spring, then alive, but since deceased, the said Seth, John, and Andrew M. then being co-partners, transacting business as merchants in the name of Seth Spring and Sons, in the sum of thirty-four thousand four hundred and seventy-seven dollars forty-five cents, according to the annexed account and in balance of the same; and being so indebted, the said William, in his lifetime, then and there promised the plaintiffs and the said Andrew, then alive, but since deceased, to pay them the same sum on demand.

And also, for that the said William Gray, heretofore, to wit, on the first day of June aforesaid, to wit, at said Saco, being then alive, was justly indebted to the plaintiffs and one Andrew M. Spring, then alive, but since deceased, they then being co-partners, doing business as merchants in the name of Seth Spring and Sons, in the other sum of forty thousand dollars, for so much money by the said William Gray before that time had and received, to and for the use of the said Seth, John, and Andrew M., and being so indebted, the said William Gray then and there, in consideration thereof, promised the said Seth, John, and Andrew to pay them the same sum on demand. Yet the said William Gray, though thereto often requested, has never paid said sums in his lifetime, nor the said executors since his decease, though also thereto often requested, but still neglect and refuse so to do, to the damage of the said Seth and John, (as they say,) the sum of fifty thousand dollars, which shall then and there be made to appear, with other due damages; and have you there this writ, with your doings therein.

Witness Ezekiel Whitman, Esq., at York, the ninth day of March, in the year of our Lord one thousand eight hundred and twenty-nine.

JERE. BRADBURY, *Clerk.*

Copy. Attest,

JERE. BRADBURY, *Clerk.*

A true copy.

Attest, JOHN MUSSEY, *Clerk.*

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SETH SPRING et al., *vs.* WM. R. GRAY et al., executors.—*C. C. pleas, York, May term*, 1829.

The officer is directed to attach sufficient real estate of said Wm. Gray, deceased, in Portland, and leave an attested copy of this writ with Thomas Brown, of said Portland, merchant, agent and attorney of the said executors.

J. SPRING.

UNITED STATES OF AMERICA, *Maine district*, ss.—*At a circuit court of the United States for the first circuit, begun and holden at Wiscasset, within and for the Maine district, on Friday, the first day of October, in the year of our Lord one thousand eight hundred and thirty: Present, the Honorable Joseph Story, Associate Justice of the Supreme Court, and the Hon. Ashur Ware, District Judge.*

Seth Spring, of Biddeford, and John Spring, of Saco, both in the county of York, merchants, and surviving partners of the late firm of Seth Spring and Sons, plaintiffs, against William R. Gray, Henry Gray, and Horace Gray, merchants, and Francis C. Gray and John C. Gray, Esqrs., all of Boston, in the county of Suffolk and commonwealth of Massachusetts, executors of the last will and testament of William Gray, late of said Boston, deceased, testate, defendants: in a plea of the case, for that the said William Gray, in his lifetime, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and twenty-one, to wit, at said Saco, was justly indebted to the plaintiffs and one Andrew M. Spring, then alive, but since deceased, the said Seth, John, and Andrew M., then being copartners, transacting business as merchants in the name of Seth Spring and Sons, in the sum of thirty four thousand four hundred and seventy-seven dollars and forty-five cents, according to the account annexed to the writ, and in balance of the same; and being so indebted, the said William, in his lifetime, then and there promised the plaintiffs and the said Andrew, then alive, but since deceased, to pay them the same sum on demand.

And also, for that the said William Gray, heretofore, to wit, on the first day of June aforesaid, to wit, at said Saco, being then alive, was justly indebted to the plaintiffs, and one Andrew M. Spring, then alive, but since deceased, they then being co-partners, doing business as merchants in the name of Seth Spring and Sons, in the other sum of forty thousand dollars for so much money by the said William Gray before that time had and received, to and for the use of the said Seth, John, and Andrew M.; and being so indebted, the said William Gray, then and there, in consideration thereof, promised the said Seth, John, and Andrew, to pay them the same sum on demand. Yet the said William Gray, though thereto often requested, has never paid said sums in his lifetime, nor the said executors since his decease, though also thereto often requested, but still neglect and refuse so to do, to the damage of the said Seth and John, as they say, the sum of fifty thousand dollars.

This action was originally instituted in the court of common pleas, in the county of York, in this district, and was removed to this court pursuant to the laws of the United States, upon the petition of the defendants, who, upon the first day of the session of this court, at the October term, A. D. eighteen hundred and twenty-nine, appear and enter said action, and pro-

duce and file in court copies of the case. Leave being granted to said defendants to plead double, the following pleadings are filed, viz. And now the said William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, executors of the last will and testament of said William Gray, deceased, come and defend, &c., when, where, &c., and say that the said William Gray, the testator, never promised in manner and form as the plaintiffs have declared against them; and of this they put themselves on the country.

By S. LONGFELLOW, *their attorney.*

And for further and second plea, by leave of court pleaded, the said William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, executors as aforesaid, come and defend, &c., when, where, &c., and say the plaintiffs their action aforesaid thereof against them ought not to have and maintain, because they say that the said William Gray, the testator, never promised in manner and form as the plaintiffs have declared, at any time within six years next before the commencement of the action aforesaid, and this they are ready to verify. Wherefore they pray judgment if the plaintiffs their action aforesaid thereof against them ought to have and maintain, and for their costs, by

S. LONGFELLOW, *their attorney.*

And for further and third plea, by leave of court pleaded, the said William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, executors as aforesaid, come and defend, &c., when, where, &c., and say the plaintiffs their action aforesaid thereof against them ought not to have and maintain, because they say that the several causes of action in the plaintiff's declaration alleged and set forth, did not, nor did any of them accrue at any time within six years next before the commencement of said action; and this they are ready to verify. Wherefore they pray judgment if the plaintiffs their said action ought to have and maintain, and for their costs, by their attorney, S. LONGFELLOW.

And for further and fourth plea, by leave of court pleaded, the said William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, executors as aforesaid, come and defend, &c., when, where, &c., and say the plaintiffs their action aforesaid against them ought not to have and maintain, because they say that the said William Gray, the testator, at any time within six years and thirty days next before his decease, did not promise in manner and form as the plaintiffs have alleged; and this they are ready to verify. Wherefore they pray judgment if the plaintiffs their action aforesaid ought to have and maintain, and for their costs, by

S. LONGFELLOW, *their attorney.*

And for further and fifth plea, by leave of court pleaded, the said William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, executors as aforesaid, come and defend, &c., when, where, &c., and say the plaintiffs their action aforesaid against them ought not to have and maintain, because they say that the said several causes of action in the plaintiffs' declaration alleged and set forth, did not, nor did either of them, accrue at any time within six years and thirty days next before the decease of said William Gray; and this they are ready to verify. Wherefore they pray judgment if the plaintiffs their action aforesaid ought to have and maintain, and for their costs, by their attorney,

S. LONGFELLOW.

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And the said Seth Spring and John Spring, as to the first plea of the said defendants, and whereof they have put themselves on the country, do the like, by their attorneys.

J. & E. SHEPLEY.

And as to the second plea by the said defendants above pleaded, they say that they ought not to be precluded from having and maintaining their action aforesaid, because they say that the accounts and promises in said declaration mentioned, are, and arose, from such accounts as concern the trade of merchandise, between merchant and merchant, their factors and servants; and this they are ready to verify. Wherefore they pray judgment, and for their damages and costs.

By J. & E. SHEPLEY, *their attorneys.*

And as to the third plea by the said defendants above pleaded, they say that they ought not to be precluded from maintaining their action aforesaid, because they say that the accounts and promises in said declaration mentioned, are, and arose from such accounts as concern the trade of merchandise, between merchant and merchant, their factors and servants; and this they are ready to verify. Wherefore they pray judgment, and for their damages and costs.

By J. & E. SHEPLEY, *their attorneys.*

And as to the fourth plea by the said defendants above pleaded, they say that they ought not to be precluded from maintaining their action aforesaid, because they say that the accounts and promises, in said declaration mentioned, are, and arose from such accounts as concern the trade of merchandise, between merchant and merchant, their factors and servants; and this they are ready to verify. Wherefore they pray judgment, and for their damages and costs.

By J. & E. SHEPLEY, *their attorneys.*

And as to the fifth plea by the said defendants above pleaded, they say that they ought not to be precluded from maintaining their action aforesaid, because they say that the accounts and promises in said declaration mentioned, are, and arose from such accounts as concern the trade of merchandise, between merchant and merchant, their factors and servants; and this they are ready to verify. Wherefore they pray judgment, and for their damages and costs.

By J. & E. SHEPLEY, *attorneys.*

And the defendants say, that by any thing by the plaintiffs above alleged in their replication to the second plea of the defendants above pleaded, the plaintiffs ought not to have or maintain their action aforesaid against the defendants, because they say that the accounts and promises in the declaration mentioned, are not, nor did they arise, from such accounts "as concern the trade of merchandise, between merchant and merchant, their factors or servants," as the plaintiffs have in the same replication alleged. And of this the defendants put themselves on the country.

By S. LONGFELLOW, and
B. R. NICHOLS, *their attorneys.*

And the plaintiffs do the like, by

ETHER SHEPLEY, *their attorney.*

And as to the replication of the plaintiffs to the third plea of the defendants above pleaded, the defendants say that by any thing by the plaintiffs in the same replication alleged, they ought not to have or maintain their action aforesaid against the defendants, because they say that the accounts and promises in the declaration mentioned, are not, nor did they arise, from "such accounts as concern the trade of merchandise, between merchant and merchant, their factors or servants," as the plaintiffs have in the same replication alleged. And of this the defendants put themselves on the country.

By S. LONGFELLOW, and
B. R. NICHOLS, *their attorneys.*

And the plaintiffs do the like, by
ETHER SHEPLEY, *their attorney.*

And as to the replication of the plaintiffs to the fourth plea of the defendants above pleaded, the defendants say that by any thing by the plaintiffs in the same replication alleged, they ought not to have or maintain their action aforesaid against the defendants, because they say that the accounts and promises, in the declaration mentioned, are not, nor did they arise from "such accounts as concern the trade of merchandise, between merchant and merchant, their factors or servants," as the plaintiffs have in the same replication alleged. And of this the defendants put themselves on the country, by

S. LONGFELLOW, and
B. R. NICHOLS, *their attorneys.*

And the plaintiffs do the like, by
ETHER SHEPLEY, *their attorney.*

And as to the replication of the plaintiffs to the fifth plea of the defendants above pleaded, the defendants say that by any thing by the plaintiffs in the same replication alleged, they ought not to have or maintain their action aforesaid against the defendants, because they say that the accounts and promises in the declaration mentioned, are not, nor did they arise from "such accounts as concern the trade of merchandise, between merchant and merchant, their factors or servants," as the plaintiffs have in the same replication alleged. And of this the defendants put themselves on the country.

By S LONGFELLOW, and
B. R. NICHOLS, *their attorneys.*

And the plaintiffs do the like, by
ETHER SHEPLEY, *their attorney.*

And the cause was thence continued from term to term to the present term; and now, after a full hearing of the evidence produced under the second, third, fourth, and fifth issues joined between the parties, and the arguments of counsel thereupon, the cause is committed by the court to a jury duly empannelled and sworn; who, after deliberation thereon had, return their verdict as follows, viz: "As to the first issue joined between the parties, the jury find no verdict. And as to the second, third, fourth, and fifth issues, the jury find that the accounts and promises in the declaration mentioned, are not, nor did they arise from such accounts as concern the trade of merchandise, between merchant and merchant, their factors or

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servants, as the plaintiffs have in their several replications to the second, third, fourth, and fifth pleas in bar alleged."

All which being seen and understood, it is therefore considered and adjudged by the court here, that the said Seth Spring and John Spring take nothing by their writ; and that the said William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray recover against the said Seth Spring and John Spring their costs in this behalf expended.

Recorded by JOHN MUSSEY, *Clerk.*

A true copy as of record.

Attest, JOHN MUSSEY, *Clerk.*

Circuit Court of the United States for the first circuit and Maine district, held at Wiscasset, on the first day of October, A. D. 1830.

SETH SPRING ET AL. *vs.* WM. R. GRAY ET AL., executors.

This is an action of assumpsit in which Seth Spring and John Spring, of Saco, in the State of Maine, as surviving partners of the firm of Seth Spring and Sons, composed of the plaintiffs and Andrew M. Spring, deceased, declare against William R. Gray, Henry Gray, Horace Gray, Francis C. Gray, and John C. Gray, all of Boston, in the commonwealth of Massachusetts, as they are executors of the last will and testament of William Gray, late of said Boston, merchant, deceased.

The action was originally instituted in the court of common pleas in the county of York, and State of Maine, and was removed to the circuit court of the United States pursuant to the laws of the United States.

The first count in the declaration is on an account annexed to the writ, a copy of which account is hereunto annexed marked H. The second count is for money had and received. The defendants pleaded, first, the general issue, which was joined by the plaintiffs; and secondly, the statute of limitations of the State of Maine. The plaintiffs, in their replication to the second plea, allege that the accounts and promises in the declaration mentioned, are, and arose from such accounts as concern the trade of merchandise, between merchant and merchant, their factors and servants. The defendants, in their rejoinder, deny the allegations in the replication upon which the parties are at issue. The action being called for trial, the parties appeared by their counsel, and the case was opened to a jury duly empannelled to try the same.

The plaintiffs, to maintain the issues on their part, offered in evidence, and read to the jury, the following testimony, papers, and documents; copies of which are hereunto annexed and referred to, to wit:

Bill of lading of the outward cargo of the barque Morning Star, signed by Andrew M. Spring, with the contract on the back of it, signed by William Gray and Seth Spring and Sons, marked A.

A letter of advice and instructions addressed to A. M. Spring, and signed by William Gray, marked B.

A letter of Tobias Lear to A. M. Spring, marked C.

The deposition of William Nason, with a bill of lading annexed, marked D. Another bill of lading of one hundred and four casks of oil, marked E.

The inward foreign entry of the cargo of barque Morning Star, with the invoices of the same cargo, marked F.

The accounts of Bainbridge and Brown, with Capt. Spring and owners of oil, ashes, and cotton, received per ships Speculator and Fanny, marked G.

The accounts from Seth Spring and Sons' books, marked H.

The accounts from William Gray's books, marked I.

Two warrants drawn on the Treasurer of the United States by the Secretary of the Treasury, in favor of the attorney of William Gray, marked K.

The plaintiffs here closed their evidence.

The plaintiffs' counsel being inquired of by the court whether they had any other cause of action than such as arose from the bill of lading of the outward cargo of the barque Morning Star, and the contract endorsed thereon, answered that they had not.

And thereupon the defendants' counsel moved the court to instruct the jury, that inasmuch as the plaintiffs had admitted that their whole cause of action arose from said bill of lading and contract endorsed thereon, the said bill of lading, and contract, with the other papers, documents, and testimony aforesaid, were not sufficient evidence, in point of law, to maintain the issue joined on the part of the plaintiffs in respect to their replication of merchants' accounts.

The plaintiffs' counsel objected to such instructions, and prayed the court to instruct the jury that the evidence introduced was sufficient to prove, and did prove, the issue last aforesaid on the part of the plaintiffs.

But the court instructed the jury that inasmuch as the plaintiffs had admitted that their whole cause of action arose from said last mentioned bill of lading, and contract endorsed thereon, the said bill of lading and contract, with the other papers, documents, and testimony aforesaid, were not sufficient evidence, in point of law, to maintain the issue last aforesaid on the part of the plaintiffs.

And thereupon the jury returned their verdict for the defendants on this issue; and upon the general issue, they found no verdict.

To which instructions and directions of the court, the counsel for the plaintiffs excepts, as against law, and prays that his exceptions may be allowed by the court here.

By ETHER SHEPLEY, *counsel for plffs.*

And inasmuch as the said several matters so produced and given in evidence for the plaintiffs, do not appear by the record of the verdict aforesaid, the counsel for the plaintiffs did then and there propose his aforesaid objection to the opinion of the court, and request the judges to put their seals to this bill of exceptions, containing the said several matters so given in evidence for the plaintiffs, according to the law in such cases provided. And thereupon the judges of said court, at the request of the counsel for the plaintiffs, have put their seals to this bill of exceptions, as of the day of trial of said action in said court.

JOSEPH STORY, [L. S.]
ASHUR WARE, [L. S.]

A.

Shipped in good order and well conditioned, by William Gray, of Boston, a native citizen of the United States of America, for his sole account and risk, in and upon the barque called the Morning Star, whereof is master

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for this present voyage, Andrew M. Spring, now in the harbor of Boston, and bound for Algiers; to say:

G.	52 bbls. 1st sort pot ashes, wt. 172 2 4 nt.	Fifty-two barrels first sort pot ashes,
"	29 do. 2d do. do. 97 3 11 "	Twenty-nine barrels second sort pot ashes,
"	3 do. 3d do. do. 8 3 1 "	Three barrels third sort pot ashes,
"	32 do. 1st pearl ashes, " 95 1 26 "	Thirty-two barrels first sort pearl ashes,
"	86 casks whale oil, 6,305½ galls.	Eighty-six casks whale oil,
"	16 hhds. tobacco, wt. 20,738 lbs. nt.	Sixteen hogsheads tobacco,
"	158 bags coffee, " 17,222 " "	One hundred and fifty-eight bags coffee,
"	26 52 23 logwood.	Twenty-six tons five cwt. two quarters, twenty-three pounds logwood,
WG.	5 boxes 1st quality indigo, 1,153 lbs. nt.	Twenty boxes indigo,
"	15 do 2d do. do. 4,576 "	
"	171 bales upland cotton, 53,803 "	One hundred and seventy-one bales upland cotton,
"	368 bundles cassia, 2,016 "	Three hundred and sixty-eight bundles cassia,
G.	50 bales nankins cont. 5,000 ps.	Fifty bales nankin,

Countersigned.

being marked and numbered in the margin, and are to be delivered in like good order and well conditioned at the aforesaid port of Algiers (the dangers of the seas only excepted) unto Andrew M. Spring, or to his assigns, he or they paying freight for the said goods, as per agreement endorsed hereon, without primage or average. In witness whereof, the said master of the said hath affirmed to four bills of lading of this tenor and date, one of which being accomplished, the other three then to stand void. Dated in Boston, May 26, 1810.

ANDREW M. SPRING.

The proceeds of the within cargo, amounting to thirty-five thousand two hundred and two dollars eighty-three cents, as per invoice, costs, and charges, is to be invested in Algiers or some other port (after deducting all charges, consignee's commission included, except freight and premium of insurance within, of which two last mentioned charges are to be made on the goods,) and returned in the said barque Morning Star to Boston, when Seth Spring and Sons (owners of said barque) are to recover one-half of the net profits thereon, in lieu of freight and primage, the voyage round. The consignee's commissions to be two and a half per cent. on the sales of the within cargo, and no commissions to be charged in Boston except what is paid an auctioneer.

SETH SPRING & SONS,
WILLIAM GRAY.

$ 35,202 $\frac{83}{100}$.

B.

Boston, *May* 26, 1810.

Capt. Andrew M. Spring:

The cargo which I have shipped on board the barque Morning Star, under your command, you will proceed with to Algiers, and a market; there sell the same for the most it will fetch, and after deducting the charges (except freight and primage) and two and a half per cent. for your commissions, invest the net proceeds in brandy, wines, and silks, and such other goods as are suitable for this market, if to be obtained; ship the whole on board the barque, and return back to Boston directly. Upon your arrival here, the whole cargo is to be sold, out of which I am to receive the first cost of the cargo now on board, agreeable to invoice, and one-half the profits for risk and interest money. The other half of the profits the owners of the said barque are to have for freight and primage on the cargoes out and home. There is to be no divisions of the cargoes or profits until the vessel returns on the transactions. Upon your arrival in Algiers, apply to our consul, Tobias Lear, Esq., and take his advice. If he recommends it, sell the cargo, and invest the proceeds as above mentioned; otherwise proceed to some other market as Mr. Lear shall advise, and as soon as you have completed your business, proceed direct for this port. In case any unforeseen accident should take place which, upon fair calculation, will or may prove that it will be for our mutual interest for you to alter the voyage, you have liberty so to do it. Annexed you have a list of my correspondents, through whom you may forward your letters to me. Committing you to Almighty protection, I wish you a prosperous voyage.

I am, Sir,

W. GRAY.

C.

Algiers, *May* 10, 1811.

Capt. Andrew M. Spring,

Master of the barque Morning Star, now in the port of Algiers:

Sir: My reply to your letter addressed to me on the 25th ultimo, requesting my advice as to the voyage which it would be best for you to pursue, or what had best be done with the cargo on board your barque Morning Star, for the interest of those concerned, and has been delayed until this time, in order to obtain, if possible, some information from France, by the two frigates which arrived here from Toulon on the 27th ultimo. The price here of the different articles composing your cargo, so far as I have been able to ascertain the same, are as follows:

Coffee $26 per cwt., weight and money of Algiers.
Indigo 15 pataca cheques per lb., weight of Algiers.
Cassia $65 per cwt., weight and money of Algiers.
Cotton $20 per cwt., weight and money of Algiers.
Logwood 16 pataca cheques per cwt., weight of Algiers.

For the pot and pearl ashes, tobacco and whale oil, no price can be found, as these articles are entirely unsaleable here. The dollar of Algiers is stated in these prices at 40 missoons, and the Spanish dollar at 56 missoons. The pataca cheque is 8 missoons. The quintal of Algiers is about 20 per cent.

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more than the net hundred of our weight; or strictly 90 lb. weight of Algiers is 112 lb. of our weight. From these you will readily make the calculation of the stated price reduced to Spanish money and our own weight. And there can be no hesitation in saying that such a sacrifice must be made of the articles which will sell (if sold) as should not be incurred but in case of real necessity, or for the purpose of purchasing a return cargo, the profits on which would justify such a sacrifice. At present there appears no prospect of doing that; and therefore there can be no object in disposing of the saleable part of your cargo here, and especially as you inform me that the nature of your agreement with Mr. Gray, and your instructions from him, would prevent your having any part of the cargo unsold, or any accounts unsettled.

I have no knowledge of any other market in this sea where better prices can be obtained for the saleable part of your cargo, excepting France. And there is no port in this sea where pot and pearl ashes, tobacco and whale oil, would be likely to sell for any thing, excepting Gibraltar or Malta, where they might be purchased to send to Great Britain. Under these circumstances, it is to be considered whether it be advisable to attempt going to a port in France.

In the first place, the risk of capture, at this moment, in attempting to go to any French port with your vessel and cargo, *in this sea*, is, in my opinion, equal to at least 40 per cent.; for it appears that all vessels found by British or Spanish cruisers, bound to a port in France, are detained; and at this season the coast is closely watched, and many small privateers are out, which do not go out in the winter. Therefore the risk is much greater now than it would have been some months past. Neither do I conceive that your vessel would be safe from detention by French privateers even if found on the point of entering a port of France, as many instances of this kind have occurred with respect to vessels which were much less an object to privateers than yours would be; and such detention would probably be attended with greater difficulties than you might find on entering the port without such detention. In the second place, suppose your vessel to have entered safe in a French port, such appears to be the security of the laws, and the vigilance of the custom-house officers, that there seems no chance of your avoiding sequestration, and perhaps condemnation, unless a special license could be obtained for admitting your cargo. On this point I am unable to give any opinion except what may be founded on the information received from yourself since your return from France, and your belief on the success of Mr. Gabriel to obtain such permission for you as you mentioned in your letter of the 25th ultimo.

But I do not think that this offers a prospect of sufficient security to hazard the voyage open; and I am further confirmed in the opinion, by the information received from Mons. de Thainville, the French Consul General for this place, who arrived in one of the frigates before mentioned.

M. Thainville distinctly says, that the certificate of origin of your cargo which you have shewn to him, is not sufficiently explicit to be admitted, and that the nankeens mentioned therein, although they have been taken out and sold here, of which he is ready to give a certificate, would cause detention and trouble to your vessel and cargo, as no vessel which has had nankeens on board, in any part of the voyage, is permitted to enter a French port, although it may be proved that she had disposed of the nankeens at

another place, before her arrival in France. And, upon the whole, he says, that he would not recommend any American vessel, with a cargo similar to yours, and under similar circumstances, to go to France in the present unsettled state of commercial regulations between the two countries.

Had the sequestration of American vessels and property in France been raised on the 2d of February, as there was good reason to expect it would have been, you might have gone with a hope of indulgence at least, if not of security. But after maturely reflecting on the subject, guided by the best information I have been able to obtain, I am decidedly of opinion that you should not hazard a voyage to France, at least, not in *this sea*. As I have before observed that the articles of your cargo constituting the great bulk, and one half the value thereof, would not be likely to sell in any port of this sea, (out of France) excepting Gibraltar or Malta, I should recommend it to you to proceed to the former place as soon as the port, (which is now shut,) shall be open; where, if you should not sell your cargo, you would be likely to hear of a better market than we know of here. The port of Algiers being shut when you arrived from France on the 30th of March, and continued so till the 26th of April, and being open from that day till the 10th of May, the present month, when it was again unexpectedly shut after a notice of only four hours, has prevented you from sailing; and as the few days in which it was open, you was expecting an answer from M. Thainville to your inquiries as to the prospect of your being able to go to a French port, with any security, much time has elapsed without bringing any more advice upon which any calculation can be made for an advantageous voyage, I fully approve your intention to sail from this, the moment that any vessel is permitted to depart; unless, before that time, you should be able to make any arrangements for purchasing the cargo of oil brought in here on the 7th instant, in a prize taken by the French frigates which sailed from this on the 29th ultimo; provided the cargo should be sold for exportation.

I have thought it best to be thus full in my reply to your letter of the 25th ultimo, in order that you might be acquainted with the grounds on which I have formed my opinion, and possessed of all the information I am able to give on the subject, knowing your extreme anxiety to do whatever may be most likely to promote the best interest of the voyage, which has been thus unavoidably prolonged.

Wishing you all success, and with readiness to give you any assistance in my power,

I am, sir,
Your obedient servant,
TOBIAS LEAR.

D.

I, William Nason, of Biddeford, in the State of Maine, of lawful age, testify and say, that I was master of the barque Morning Star, on a voyage from Algiers to Boston in 1811. Cleared from Algiers, July 3d, with a cargo of oil, and arrived at Boston the latter part of August or the first of September, and landed the cargo at Charlestown on William Gray's wharf. It was delivered to Mr. Gray's wharfinger. One hundred and four casks of oil were consigned to Mr. Gray, and twenty-seven casks and one hun-

732.

dred and twenty-three cases were consigned to Seth Spring and Sons. The whole was landed on Mr. Gray's wharf. The casks were, to the best of my recollection, in good order. I did not know of any leaky, and no casks were stove on the voyage; I saw no leakage. We used a good deal of the oil on the voyage with our food: we called it good; it was clear, and had no bad taste. We found the oil better than the oil we bought in bottles on shore at Algiers. The oil consumed on the voyage was taken out of the cargo. We might have used four or five gallons taken from different casks. We found it all good. Seth Spring was present before we had finished unloading. The owners were all present, and I took no receipt on the bills of lading. In cargoes of oil there is usually some leakage. Our casks were good, and I do not recollect that there was any leakage. It was in consequence of the order of Mr. Gray that the cargo was landed on his wharf, and it was delivered to the man who had the care of this wharf and Mr. Gray's store. I delivered no part of the cargo to Spring, and do not know whether he received any part of it or not. The annexed paper, produced by the counsel of the Springs, is the original bill of lading of the part of the cargo consigned to Seth Spring and Sons. The casks were of various sizes, holding four and five hundred gallons, and some not more than sixty gallons.

WILLIAM NASON.

August 26.

Shipped, by the grace of God, in good order and well conditioned, by Andrew M. Spring, in and upon the good ship called the Morning Star, whereof is master, under God, for this present voyage, William Nason, and now riding at anchor in the port of Algiers, and by God's grace, bound for Boston, United States of America, to say:

AS.
No. 1 to 27 twenty-seven casks of olive oil, and one hundred and twenty-
" 1 to 123 three cases of olive oil.

Being marked and numbered as in the margin, and are to be delivered in like good order and well conditioned, at the aforesaid port of Boston, (all and every the dangers and accidents of the seas and navigation, of whatever nature or kind soever, excepted,) unto Seth Spring and Sons, or to their assigns, he or they paying freight for the said goods, nothing being the captain's privilege, with primage and average accustomed. In witness whereof, the master or purser of said ship hath affirmed to three bills, all of this tenor and date, the one of which three bills being accomplished, the other two to stand void. And so God send the good ship to her destined port in safety. Amen.

Dated in Algiers, the third day of July, 1811.

WILLIAM NASON.

Amount duties $601 11.

E.

Shipped, by the grace of God, in good order and well conditioned, by Andrew M. Spring, in and upon the good ship called the Morning Star, whereof is master, under God, for this present voyage, William Nason, and now riding at anchor in the port of Algiers, and by God's grace, bound for Boston, to say: one hundred and four casks olive oil, being marked and numbered as in the margin,

GS.
1 to 104

and are to be delivered in like good order and well conditioned, at the aforesaid port of Boston, (all and every the dangers and accidents of the seas, and of navigation of whatever nature or kind soever, excepted) unto William Gray, Esq., or to assigns, he or they paying freight for the said goods, with primage and average accustomed. In witness whereof, the master or purser of said ship hath affirmed to three bills of lading, all of this tenor and date, the one of which three bills being accomplished, the other two to stand void.

And so God send the good ship to her destined port in safety. Amen.

F.

Invoice of the cargo shipped by Andrew M. Spring, a native citizen of the United States of America, on account and risk of William Gray, Esq., merchant, of Boston, on board the barque Morning Star, William Nason, master, and bound for Boston.

GS.	One hundred and four casks olive oil, containing thirty-five hundred and twenty-three measures of Algiers, at ninety Algerine dollars per 28 measures, $14,023 32 missoons, equal to Spanish - - - -	$8,088 58
		$8,088 58

Algiers, 3d July, 1811.

Errors excepted.

ANDREW M. SPRING.

Invoice of articles shipped by Andrew M Spring, a native citizen of the United States of America, on his sole account and risk on board the barque Morning Star, William Nason, master, and bound for Boston, and consigned to Messrs. Seth Spring & Sons.

AS.	Twenty-seven casks olive oil, containing ten hundred and forty measures of Algiers, a $90 Algerine per 28 measures, $3,420 of Algiers - - -	$2,442 85
	Three small casks, at ten dollars per b. - -	30 00
	One hundred and twenty-three boxes, containing thirty bottles olive oil, each a $7, 16 missoons, Algerine money, per case - - - - -	649 84
		$3,122 69

Algiers, 3d July, 1811.

ANDREW M. SPRING.

737.

INWARD FOREIGN ENTRY.

Entry of merchandise imported by William Gray in the barque Morning Star, William Nason, master, from Algiers.

GS.	1 to 104.	One hundred and four casks olive oil	-	$8,088 58
AS.	1 to 27.	Twenty-seven casks	} -	3,122 69
	1 to 123.	One hundred and twenty-three cases	}	

CUSTOM HOUSE, BOSTON,
September 2d, 1811.

I certify that this is a correct copy of the number of casks and cases of olive oil, and the value thereof, imported into this district on the thirty-first day of August, eighteen hundred and eleven, and that the duty on the same was twenty-one hundred and fifty-eight and $\frac{15}{100}$ dollars.

DAVID HENSHAW, *Collector.*

G.

Dr. *Captain Spring, and owners of oil, ashes, and cotton, received per ships Speculator and Fanny, in account current with Bainbridge and Brown, London.*

1812.		
April 10,	To cash paid Forrester, arbitration bonds, &c.	£ 5 16 9
July 10,	To charges allowed per arbitrators - -	81 18 4
Dec. 31,	To bal. carried to credit of Wm. Gray, Esq.	1,087 16 11
		£1,175 12 00

Supra. Cr.

1812.		
Mar. 31,	By net proceeds, 36 bags cotton per Fanny -	£372 3 10
April 10,	By cash per A. Lande and James Cooper, difference price ashes - - - -	116 3 8
July 10,	By net proceeds, 89 casks whale oil, per Speculator - -	310 9 7
"	By do. 84 barrels pot } ashes pr. 32 do. pearl } Specul'r	345 3 4
Dec. 31,	By interest - - - - - -	31 11 7
		£1,175 12 0

Errors excepted.

LONDON, 31st December, 1812.

BAINBRIDGE & BROWN.

Interest account.

1812.			
Mar. 31,	By £372 3 10	10 days at 5 per ct. - -	£0 10 2
Apr. 10,	" 116 3 8		
	488 7 6		
	To 5 16 9		
	482 10 9	3 mo's - - -	6 0 9
July 10,	By 310 9 7		
	" 345 3 4		
	1,138 3 8		
	To 81 18 4		
	1,056 5 4	To Dec. 31, 5 mo. 21 days' int'st	25 0 8
Dec. 31,	31 11 7	Interest	
	£1,087 16 11	Balance - - -	£31 11 7

H.

William Gray, Esq., of Boston, Mass., in account with Seth Spring and Sons.

Dr. Cr.

1810.			1811.	By amount of the outward cargo of the barque Morning Star, as per original invoice and bill of lading - - -	$35,202 83
Sept.	For loss sustained on the sloop Fanny, capt. Ebenezer Jordan, master, which said Gray insured	$2,500 00			
1811.				His half the profits of said Morning Star's voyage	14,469 03
Oct.	For 55,000 gallons oil in casks delivered him from barque Morning Star, Wm. Nason, master, at Boston, a 7s. 6 per gal.	43,750 00	1829.	Balance now due from estate of said William Gray	34,477 45
"	127 cases oil delivered by same, at $10 00 per case	1,270 00			
"	53,803 lbs. cotton left with Mr. Lear, and afterwards paid for by the Dey of Algiers to Com. Stephen Decatur, a 30 cts. pr. lb.	16,140 90			
"	Cash paid by A. M. Spring to Bainbridge & Co. merchants, England, and by them passed to the credit of said Gray - -	2,000 00			
	Paid A. M. Spring his commissions, a 2½ per ct. on said barque's outward cargo as per agreement - - -	880 00			
1829.	Interest on loss on sloop Fanny 19 years -	2,850 00			
	Interest on one half the profits of Morning Star's voyage, per agreement	14,758 41			

I. 752.

BOSTON, March 8th, 1810.

Adv. per barque Morning Star to notes payable. Dr.

For my notes 2d inst. 60 days to Jas. Pinkerton for 30 bbls. 1st quality, and 16 bbls. 2d quality pot ashes, per bill - $1,129 06
30 bbls. £95 0 7, a 48*s.* 2*d.*, $760 50. 16 bbls. 2d, 51 1 20, a 43*s.* 2*d.*, $368 56.

11th.

Adv. per barque Morning Star to sundry accounts. Dr.

For amount Com. Coolidge and Co's bill,
158 bags coffee 17,222 lbs. a 25 cts. - - 4,305 50
Deduct debentures - - - - 823 34
3,482 16
Interest for 77 days' discount on ditto, 44.68,
U. S. bank check from C. Coolidge & Co., 3,437.48, balance - 3,482 16

15th.

Adv. per barque Morning Star to Goodhue & Sorett. Dr.

For my draft on them this date, favor Josiah Bradlee, 30 days, for amount his bill for 86 casks whale oil, 6,305½ gals. a 30 cts. 1,891 65

16th.

Adv. per barque Morning Star to U. States Bank. Dr.

For drafts, favor Lunt and Leach, 15th instant, amount their bill, 16 hhds. tobacco, 20,738 lb. weight, a $6 75. Inspection $4 1,403 81

22d.

Adv. per barque Morning Star to H. W. Gordon. Dr.

For amount Johnson and Marsh's bill, 28 bbls. pot and pearl ashes, charges paid by him, deducting 81 cts. for two errors in the bill - - - - - 717 45
Amount Josiah Marshall & Co.'s bill for 30 casks pot ashes, say 17 casks 1st sort, 10 casks 2d sort, 3 casks 3d sort, inspection and cooperage paid by him 801 18
Amount Lovejoy and Taggard's bill for 12 casks 1st sort pearl ashes paid by him - - - 274 64
1,793 27

26th.

Adv. per barque Morning Star to cash, Dr.

Paid for certificate origin - - - - 1
" French consul's fees - - - - 10
— 11 00

28th.

Adv. per barque Morning Star to cash, Dr.

Paid Seth Spring and Sons' bill for charges on cargo 154 28

Deducting amount paid by me, repaid to them by

Johnson and Marsh - -	10 73		
Josiah Marshall & Co. - -	10 75		
		21 48	
			132 80

5th July.

Adv. per barque Morning Star to cash, Dr.

Paid certifying invoice - - - - - - 1 25

31st August.

Adv. per barque Morning Star to H. W. Gordon, Dr.

Short credits Johnson and Marshall's bill - - - 81

31st August.

Adv. barque Morning Star to William R. Gray, Dr.

Paid getting out debentures - - - - - 3 30

February 25, 1811.

Adv. per barque Morning Star to sundry accounts, Dr.

For amount sundries shipped per invoice 26th May, 1810;			
Merchandise for 171 bales Georgia upland cotton, 53,803 lbs. a 16 cts. - - -		8,608 48	
Salem stock, amount Jona. Muiy's bill paid W. R. Gray, for 26, 5, 2, 23, logwood, a 62.50, and credited said Gray in Salem books.		1,642 83	
Ship Catharine, 3d voyage, 5 boxes 1st quality indigo, 1,153 lbs. a $2, short price - -		2,306 00	
15 boxes 2d quality indigo, 4,576 lbs. a $1 76, short price, 8,053.76 - - -		10,359 76	
Ship Minerva, for 368 bundles cassia, 2,016 lbs. a 50 cts. short price - -	1,008 00		
50 bales contg. 5,000 pieces nankeen, 75 c. short price - -	3,750 00		
		4,758 00	
			25,369 07

August 31, 1811.

Adventure per barque Morning Star to Union Bank, Dr.

For check favor H. Dearborn, for entry fees, $5 50, tonnage $11 14, hospitals $23 37, bonds and permits $1 40 - 41 40

August 31st.

Adventure Morning Star to cash, Dr.

Paid quarantine fees - - - - - - 5 00

September 13th.

Adventure per Morning Star to cash, Dr.

Paid Aaron Hall for gauging cargo oil and taking wants - 20 00

18th.

Adventure per Morning Star to cash, Dr.

Paid labor on oil per S. B. Rand's bill - - - - 3 63

753.

17th.

Adventure per Morning Star to cash, Dr.

Paid labor on oil - - - - - - 41 99

28th.

Adventure per Morning Star to cash, Dr.

Paid watching oil 21st inst. - - - - - 8 00

30th.

Adventure per Morning Star to cash, Dr.

Paid laborers 28th instant - - - - - 9 33

October 12th.

Adventure per Morning Star to cash, Dr.

Paid laborers 5th inst. - - - - - - 9 67

19th.

Adventure per Morning Star to cash, Dr.

Paid laborers 12th - - - - - - 10 00

26th.

Adventure per Morning Star to cash, Dr.

Paid laborers 19th watching oil - - - - 8 00

2d November.

Adventure per Morning Star to cash, Dr.

Paid laborers watching oil 26th October - - - 9 34

9th.

Adventure per Morning Star to cash, Dr.

Paid laborers watching oil - - - - - 8 00

16th.

Adventure per Morning Star to cash, Dr.

Paid laborers watching 5th inst. - - - - 13 67

23d November, 1811.

Adventure per Morning Star to cash, Dr.

Paid laborers 16th for watching oil - - - - 23 66

30th.

Adventure per Morning Star to cash, Dr.

Paid laborers 23d - - - - - - 1 33

19th March, 1812.

Adventure per Morning Star to cash, Dr.

Paid getting out debentures - - - - - 60

28th.

Adventure per Morning Star to cash, Dr.

Paid R. Hooper's bill, labor and gauging oil - - - 2 02

30th April.

Adventure per Morning Star to sundry accounts, Dr.

Amount my first bond for duties $719 15:

Impost account for H. Dearborn's check for one debenture	496 67	
State bank check favor ditto balance bonds	222 48	
		719 15

30th June.

Adventure per Morning Star to sundry accounts, Dr.

Amount my 2d bond for duties:

Impost account for H. Dearborn's check for one debenture	494 00	
State bank check favor ditto balance bond	225 00	
		719 00

6th July.

Adventure per Morning Star to cash, Dr.

Paid Jonas Tyler per bill nails for oil shed - - - 1 10

31st August.

Adventure Morning Star to State Bank, Dr.

Check, her favor, paid last bond for duties - - - 720 00

12th January, 1813.

Adventure Morning Star to Thomas B. Rand, Dr.

For his bill coopering oil, new casks, &c. - - - 309 88

30th May, 1818.

Barque Morning Star to cash, Dr.

Paid Codman's notary taking depositions - - - 8 25

September 15, 1823.

Adventure per barque Morning Star to sundry accounts, Dr.

For settlement this adventure with A. M. Spring, determined by suit of law in district court in May, 1821, in which Spring got judgment for the sum of - - - 7,775 00

Cost 69 29

7,844 29

Andrew M. Spring for this amount charged him 22d May, 1812, cash advanced in Liverpool, and making a part of my account against him in settlement mentioned below - - - 400 00

Adventure barque Morning Star for my account against Spring put in offset to his executions against me - 626 23

Less $400 above - - - - 400 00

226 23

Suspense account for check paid R. D. Tucker 14th May, 1821, per his receipt favor cashier Saco Bank, in whose hands Spring's executions was left - - - - - 7,218 06

" said check charged suspense account May, 1821 - - 7,844 29

754.

September 15.

The foregoing are all the charges to the adventure of the Morning Star in Mr. Gray's waste books. The following are all the credits, viz:

Boston, 14th February, 1812.

Benj. T. Reed to adventure per Morning Star, Dr.

For one cask olive oil, AS, 62½ gals. a $1 50 - - - 93 75

13th March.

Wm. R. Gray to adventure per Morning Star, Dr.

For 65 casks olive oil 13,851 galls. a $1 05, short price - 14,543 55

19th March.

Import account to adventure per Morning Star, Dr.

For three debentures imported by William Gray, and exported by Wm. R. Gray in ship Minerva, $496 67, $494, $494 - 1,484 67

30th September.

William Pickett to adventure per Morning Star, Dr.

To cash received by him for an old oil cask - - - 5 00

5th November.

William R. Gray to adventure per Morning Star, Dr.

For net proceeds one cask of olive oil, 47 gals., per his account sales rendered - - - - - - 66 47

31st August, 1813.

Bainbridge and Brown to adventure per Morning Star, Dr.

For balance Capt. Spring's shipment for every account per ships Speculator and Fanny, say net proceeds of cotton, oil, pot and pearl ashes, per sales, or per sterl'g £1,087 16 11 - - 4,834 87

31st December.

Com. Goodhue and Sorett to adventure Morning Star, Dr.

For amount 56 casks olive oil consigned them per sloop Harriet, J. P. Fellows, master, per invoice 4th October, 1811, containing 3,315 galls. net, a $1 50 per gallon - - - 5,272 50

March 7, 1818.

U. S. Branch Bank to adventure per Morning Star, Dr.

Deposited amount received from Government for proceeds of cotton sold at Algiers by Consul Shaler - - - 10,064 62

20th April.

U. S. Branch Bank to adventure per Morning Star,

Deposited balance received of J. Holmes on account of my cotton paid by Government - - - - - - 108 60

September 15, 1823.

Stock to adventure Morning Star,
For balance this account - - - - - 9,055 24

I certify the foregoing are true copies of all the entries in the waste book of William Gray, deceased, to the account of the adventure per barque Morning Star, the same being regularly posted into the journals and legers. The following credits are contained in the general accounts current, which William R. Gray rendered to his father, William Gray, on the 31st March, and 31st December, 1812.

1812, March 6. By 65 casks olive oil, 13,851 galls. for ship Minerva, a $1 05 - - 14,543 55

Oct'r 28. By net proceeds of olive oil, per barque Morning Star, Spring, master, from Algiers 66 47

SAMUEL DORR, Jr.

Boston, July 2, 1830.

K.

No. 4,836. } 274

To Thomas Tudor Tucker, Treasurer of the United States, greeting:

Pay to John Holmes, attorney for William Gray, or order, ten thousand and sixty-four dollars and sixty-two cents, being for so much received by William Shaler, Consul General of the United States at Algiers, and for which he is held accountable, being the proceeds of a quantity of cotton sold by the said Shaler at Algiers, the said cotton having been restored by the Dey of Algiers, at the conclusion of the late war between him and the United States, agreeably to and in part of the certificate of the Comptroller of the Treasury, dated February 23, 1818, recorded by the register; copy whereof is filed in my office.

Given under my hand and seal of the Treasury, this twenty-seventh day of February, in the year of our Lord one thousand eight hundred and eighteen, and of independence the forty-second.

WM. H. CRAWFORD,
Secretary of the Treasury.

Countersigned by JOS. ANDERSON, *Comptroller.*

Dollars 10,064 62.

Entered in the Register's office, this twenty-seeond day of February, 1818.

JOS. STRETCH,
For the Register.

[*Treaties with Mediterranean Powers.*]

K. } 36

To Thomas Tudor Tucker, Treasurer of the United States:

Pay to John Holmes, attorney for William Gray, or order, one hundred and eight dollars and sixty cents, being so much received by William

735.

Shaler, Consul General at Algiers, for which he is to be held accountable; being the proceeds of a quantity of cotton sold by the said Shaler at Algiers, the said cotton having been restored by the Dey of Algiers at the conclusion of the war between him and the United States, agreeably to and in full of the certificate of the Comptroller of the Treasury, dated February 23, 1818, recorded by the Register; copy whereof is filed in my office: for so doing, this shall be your warrant.

Given under my hand and seal of the Treasury, this sixth day of April, in the year of our Lord one thousand eight hundred and eighteen, and of independence the forty-second.

WM. H. CRAWFORD,
Secretary of the Treasury.

Countersigned by JOS. ANDERSON, *Comptroller.*

Dolls. 108 60.

Entered in the Register's office this 6th day of April, 1818.

JOHN S. HARR,
For the Register.